



SUPERIOR

SCHOOL OF REAL ESTATE

Code of Ethics in the Real World



Student

Manual

4 Hours Elective Continuing Education

Written by Mel Black

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About the Instructor

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Sandra is a Past President of the NC REALTORS, and served as a Regional Vice President for the National Association of REALTORS representing NC, SC, Kentucky and Tennessee. Sandra was admitted to the NC REALTORS's Hall of Fame in 2020 and designated as REALTOR of the Year in 2014. Sandra is currently a Real Estate Instructor and active Broker. She served as Sales Manager and Broker in Charge of a large Greensboro, NC office of 120 agents for thirteen years after owning and operating her own boutique real estate firm for twenty years. Sandra often teaches the Code of Ethics for New Member Orientation at the Greensboro Regional REALTORS Association. Prior to becoming a real estate broker, Sandra worked as a Law Librarian and a Junior High School Art Teacher. She holds a Master's Degree in information and library science from the University of Washington in Seattle and holds a Bachelor's Degree in Art and Art Education from Carlow University in Pittsburgh, PA. Sandra currently serves as Vice Chair of the Greensboro Zoning Commission and is a member of the NC Real Estate Commission, serving as Chair for the 2020-2021 term. In her spare time Sandra enjoys reading, travel and gourmet cooking. Anything chocolate will do!

The 4 C's:

Code of Ethics

Real Estate Commission

Civil

Criminal

Code of Ethics Matters

These matters are handled by the local Board or Association of REALTORS®.

An **ethics complaint** can be filed by anyone who has reason to believe that a Realtor® has engaged in conduct that violates a specific Article or Articles of the Code of Ethics.

An **arbitration matter** is a request to have the Board or Association act in the event of contractual disputes, which are usually over a brokerage fee or commission. Usually filed by a party to the dispute, these matters are handled under Article 17 of the Code.

The **Grievance Committee** acts as a “gatekeeper.” Its only purpose is to compare information related to the matter with the Code of Ethics and decide on whether the matter should proceed to hearing.

The **Professional Standards Committee** conducts hearing on any ethics and arbitration disputes.

The outcome of a Code of Ethics matter has historically been confidential and not available to the public. However, according to Realtor Magazine, there is a move afoot to expose the name, photo, and description of wrongdoings of Realtors who violate the Code of Ethics

Real Estate Commission Cases

These matters are handled by the North Carolina Real Estate Commission under Article 3A of the North Carolina Administrative Procedures Act (NCGS 150B,) the Commission’s governing statutes (NCGS 93A,) and the Commission’s administrative rules (21 NCAC 58A.) Commonly referred to as “administrative” cases, these complaints may be commenced by any person filing a complaint with the Commission or on the Commission’s own motion.

Typically, a licensee learns of a complaint via a Letter of Inquiry from the Commission staff and is expected to respond to that letter. The scope of the investigation may take various forms and may include statements, interviews, subpoenas for documents and appearance, and a Letter of Inquiry string. Once the Commission staff has the information they require, a decision is made to either close the case or move the case along for further prosecution. This is called the probable cause determination. If the case is closed, the parties are notified. If probable cause is found, the case continues. While it is possible that new information may support a dismissal, most cases where probable cause is found are resolved by either a consent order or by hearing.

A **consent order** is an agreement executed by the licensee and agreed to by the Commission where the parties agree to a resolution. It is similar to a plea deal in a criminal case.

A **hearing** before the Commission is a formal proceeding where the Members of the Commission hear evidence and render a decision on the matter and issue a Finding of Facts, Conclusions of Law, and Order. The appeals process is described under Article 4 of NCGS 150B. Cases that end with a reprimand or higher are published in the Commission's *Bulletin* and some are filed with the Register of Deeds in the licensee's county. Details of the cases are public record.

Civil Cases

A civil case is a legal dispute involving civil law in which the parties are individuals or entities. The award to the winners of these types of cases is usually monetary, injunctive, or a form of specific performance.

The **plaintiff** is the party that is claiming that they were wronged by the defendant.

The **defendant** is the party the plaintiff is claiming wronged them.

There may be multiple plaintiffs and defendants in many different situations by joining parties into a cause of action. This may arise when many people have been wronged by the same or connected act or if there are claims that multiple parties have worked together to wrong the plaintiff(s).

Cases may be filed in a variety of levels in state or federal court dependent upon jurisdictional issues, issues of law, and the amount of money in controversy. The case may go through different levels of the court system. A party who does not like the decision may appeal the decision. Examples of civil actions related to real estate transactions includes: actions to recover commission, malpractice issues, appeals of Real Estate Commission decisions, and issues related to misrepresentation.

Criminal Cases

A criminal case is a legal dispute brought by the state or federal government in which the defendant is accused of violating a criminal law. If found guilty, the defendant may be punished by fine, probation, incarceration, or other punishment.

The **defendant** is the party that the entity is claiming committed a crime under federal or state law.

There may be multiple defendants in cases where multiple parties conspired or are accused of a conspiracy to allegedly commit the crime in question.

Cases may be filed in a variety of levels in state or federal court dependent upon whether state or federal law was broken and with consideration of jurisdictional issues. Examples of criminal actions related to real estate transactions includes: mortgage fraud, falsifying documents, identity theft, and general dishonest activity.

Code of Ethics and Standards of Practice of the National Association of Realtors®

Where the word Realtors® is used in this Code and Preamble, it shall be deemed to include Realtor-Associate.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

PREAMBLE

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Realtors® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose **obligations beyond those of ordinary commerce**. They impose **grave social responsibility** and a **patriotic duty** to which Realtors® should dedicate themselves, and for which they should be diligent in preparing themselves. Realtors®, therefore, are **zealous to maintain and improve the standards of their calling** and share with their fellow Realtors® a **common responsibility for its integrity and honor**.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, Realtors® continuously **strive to become and remain informed** on issues affecting real estate and, as knowledgeable professionals, they willingly **share the fruit of their experience and study with others**. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to **eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession**. Realtors® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of Realtors®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, Realtors® urge exclusive representation of clients; **do not attempt to gain any unfair advantage over their competitors**; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where Realtors® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term Realtor® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. **No inducement of profit and no instruction from clients ever can justify departure from this ideal.**

In the interpretation of this obligation, Realtors® can take no safer guide than that which has been handed down through the centuries, embodied in the **Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."**

Accepting this standard as their own, Realtors® **pledge** to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, Realtors® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve Realtors® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, Realtors® remain obligated to treat all parties honestly. *(Amended 1/01)*

Article 2

Realtors® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. Realtors® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

Article 3

Realtors® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

Article 4

Realtors® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, Realtors® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

Article 5

Realtors® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

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)*

Article 7

In a transaction, Realtors® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the Realtor®'s client or clients. *(Amended 1/93)*

Article 8

Realtors® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

Realtors®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in a clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

Duties to the Public

Article 10

Realtors® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

Realtors®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

Article 11

The services which Realtors® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

Realtors® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

Article 12

Realtors® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. Realtors® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

Article 13

Realtors® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, Realtors® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

Duties to Realtors®

Article 15

Realtors® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

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. *(Amended 1/04)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between Realtors® (principals) associated with different firms, arising out of their relationship as Realtors®, the Realtors® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, Realtors® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of Realtors® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, Realtors® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of Realtors® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

Commission Cases

Case 1: Flat Fees With Limited Services

Broker owns a brokerage firm in Castle Rock, Colorado. The firm provides limited services to sellers at a flat fee. An anonymous informant notified the Colorado Commission of Broker's practices and the Commission investigated 3 specific transactions where he provided limited services for a flat fee. In the 3 cases, Broker provided services limited to:

- Listing the property in MLS for one case.
- Providing a yard sign, lockbox, and centralized showing services for the other 2 cases.

Broker used a listing agreement in each case that specifically disclaimed Broker's responsibility to perform any other work including the discovery and disclosure of material fact and other of Colorado's statutorily prescribed duties for real estate brokers.

Broker's position was that he specifically followed the details of the listing agreement and that he performed exactly what he agreed to perform. He also argued that he had a legal right to enter into a contract for specific services and that the Commission's duties were only meant to be default duties if there were no contract in place.

The Commission's position was that the duties for brokers mandated by rule and law applied to all brokers in all transactions and that Broker could not pick and choose which duties he performed. He was required to perform all of the duties, which included the duty to discover and disclose material facts.

At the conclusion of the hearing, the Commission found that Broker failed to perform the duties of a broker as mandated by state laws and rules. Broker was publicly censured, required to take 12 hours of classes, and pay a \$2,000 fine.

Broker appealed to the Court of Appeals arguing again that he as a citizen of the State of Colorado had the unalienable right to define his duties and services by contract with his client. The Commission said, “Read the statute, fool!” (paraphrased.) The decision was upheld. Discussion Scenario Based on: *Colorado Real Estate Commission v. Vizzi*, 2019 WL 1087016

Discussion Questions

1. What are the duties of agents in NC?
2. Can the NC Real Estate Commission fine a licensed broker?
3. What do you make of Broker’s position?
4. If you worked for a limited services company in NC, list ways you can comply with NC Law.

Case 2: A Broker Selling Their Own Property

Broker owned a property in Charlotte and decided to list it for sale. Broker indicated “No” on most of the items on the seller disclosure form. Buyer #1 went under contract, had an inspection during the due diligence period, and discovered a number of structural and mechanical issues that included damage to the roof, wood rot, water intrusion around the windows, electrical problems, plumbing problems, broken window seals, cracks in the fireplace, structural instability of the deck, and drainage problems. Buyer #1 gave Broker a copy of the inspection showing the issues and tried to negotiate. Things didn’t work out and Buyer #1 terminated because of these issues.

Broker did not update the seller disclosure form, continued to present it although it contained false information, and did not otherwise disclose the material facts learned from the inspection.

Buyer #2 asked why the property was active again. Broker did not disclose the new material facts, gave non-updated seller disclosure, and said that Buyer #1's financing fell through. Buyer #2's inspection showed the same issues. During negotiations about the repairs, Broker offered \$1,000 toward repairs but Buyer #2 found that amount insufficient given the extent and nature of the needed repairs. During this time, Buyer's Agent discovered the existence of the first inspection, asked for it, the content of the inspection, and questioned Broker as to why they did not update the seller disclosure to make it truthful. Broker admitted to having the first inspection in the past but claimed that they could not find a copy. Broker explained that they did not share the material facts from the first inspection because they did not want Buyer to be influenced by the items in the first inspection report. Broker further stated that it was Buyers job to do their own discovery during the due diligence period.

Buyer #2 and Buyer's agent gave Broker a chance to set things straight by asking Broker to update the seller's disclosure and disclose the material facts. Broker refused. Buyer #2 filed a complaint with the Commission

Discussion scenario is based on NC Real Estate Commission Case #D18-0291

Discussion Questions

1. Does a licensed broker selling his/her own property have a duty to discover and disclose material facts?
2. How did you think Buyer #2's agent discovered the first inspection?
3. Are there agents in NC that actually try to sneak material facts by buyers?
4. What is Broker's best argument?
5. Is there a Code of Ethics violation here? If so, which one(s)?
6. What should the Commission do with the case? (There is a surprise here!!)

Case 3: Square Footage, Material Fact, and License Disclosure --Oh My!

Broker purchased a residential property in Knightdale at a foreclosure sale, made repairs, and listed the property for sale. There were three major issues:

Square Footage. Buyers relied on the square footage of 3175 in MLS and the information in Broker's seller disclosure to make an offer of \$284,500. The square footage was inappropriately taken from tax records. The bank's appraiser found 2956 sq.ft. Buyer tried to negotiate the sales price but Broker refused. In response to the complaint, Broker said the square footage issue was an oversight and Broker takes full responsibility for copying tax records. Broker had the property measured (after the complaint) at 3019 sq.ft. by a professional service and notes this number is within 5%. (3175 - 2956 = 219 or 6.9% difference. 3175 - 3019 = 156 or 4.2% difference.)

Material Facts. Broker's seller disclosure had "No" for all the questions related to mechanical and structural items, except #14 was a "No Representation" on the type of water pipes and #17 and #18 about the sewer system were not answered. Buyers' inspection showed a misrepresentation on the age of the HVAC system, water issues in the crawl space, water damage related to a roof issue, and other issues. Broker spent six months "repairing the house to the best condition" Broker could and "disclosed clearly what Broker was able to observe."

Disclosure of Broker License. Buyers say that Broker did not disclose in advertising that Broker was the owner of the property and that Buyers only learned this late in the transaction. Broker replied that she put "seller is licensed professional," in MLS and verbally told the Buyers' agent about being a licensed broker.

Buyers terminated during the due diligence period and received their earnest money deposit. They asked for the \$500 due diligence fee because of Broker's violation that related to copying square footage from tax records and Broker's failure to meet the duty to discover and disclose material facts. Buyers also felt that Broker breached the contract by being dishonest in the seller's disclosure. Broker refused to return the \$500 but did offer Buyers \$150 if they would not file a complaint with the Commission. Buyers refused the \$150 and filed the complaint. Discussion scenario is based on NC Real Estate Commission Case #D18-0928

Discussion Questions

1. The Commission says in the "Yellow Book" and in multiple Update Courses that a listing agent must not use tax records for square footage. Why do listing brokers continually violate this

guidance?

2. What percentage of listing agents are still using square footage from tax records or old appraisals?
3. Why do some listing agents think they are exempt from the material fact disclosure rules when selling their own property?
4. What would you do, as a buyer agent, if you saw questions on the seller's disclosure left blank?
5. What do Commission rules require related to disclosing a broker's ownership interest in a property they are selling?
6. What do Code of Ethics require related to disclosing a broker's ownership interest in a property they are selling?

Case 4: Can You Sell Your Own House and Be a Buyer's Agent?

A husband and wife ("Couple") were moving to the Charlotte area from Florida. They hired a buyers agent who they liked and who worked diligently for them as they competed to buy a house in the \$200,000 price range in early 2018. Husband was in the area for a new job and living in an RV while Wife was back in Florida packing up. After trying to buy several houses and desperate to find a place to live, Couple decided to rent for a while. While looking at a rental property, they saw a nearby FSBO owned by Broker Husband and Broker Wife.

Couple contacted Broker Husband, who disclosed that he and his wife owned the house and were both brokers. He asked Couple if they had a buyer agent and became angry when he learned that they did. Couple liked their buyer agent, and wanted her to help them with this transaction. They didn't have any issue making sure she was paid a commission. Broker Husband was angry that Couple wanted their own representation, and insisted that their buyer agent was not due a commission because she did not find the house. He insisted that the deal could only go forward if Couples' buyer agent was not involved at all.

Couple called their buyer agent. They were emotionally drained from trying to find somewhere to live and torn on what to do next. Buyer agent voluntarily offered to step aside and release them from the buyer agency agreement. Couple moved forward without their buyer agent because they did not want to lose the house.

Couple received an offer to purchase completed by Broker Wife and to their surprise there was a buyer agent listed on the contract. None other than Broker Wife. Although this was done without their knowledge or permission, Couple reluctantly signed the offer. The transaction progressed through the typical types of inspections and repairs.

One week before closing, the closing attorney informed Couple that Broker Wife had 3 judgments liens on the property and that the closing would be delayed. Broker Wife promised all parties that the liens would be satisfied in a few days, but they were not. Couple was distraught that they still had no place to live. They were furious that Broker Wife did not disclose these liens at the beginning of the transactions and that she let them spend money on buying a house when she knew she could not deliver clear title.

Couple sent a termination notice and asked for a return of \$3000 in earnest money and \$1000 in due diligence fee. Broker Wife and Broker Husband were initially unresponsive and later when Couple caught up with them by phone, refused to sign the termination or return any money. Couple filed a complaint.

Discussion Questions

1. How competitive was the Charlotte market (or your market) in the \$200,000 price point in early 2018?
2. Why would Broker Husband refuse to allow Couple to have their own representation?
3. Do you think the WWREA was adequately explained and signed? (Yeah, I asked that with a straight face!)
4. How in the world could Broker Wife believe that it is proper to be a buyer agent for a buyer who is buying a property that Broker Wife owns? Geez!
5. What are the provisions of the standard offer to purchase and contract that apply to the ability of a seller to deliver title?

6. Are the sellers' judgments a material fact? If so, why?
7. Couple cited Section 8 paragraph (n) of the Offer to Purchase and Contract as justification for return of the due diligence fee. How does that apply to this case?
8. What happens to the earnest money?
9. What should the Commission do with the case regarding Broker Wife? Broker Husband?

Case 5: Listing Agent Copied Square Footage and Bedroom Count from Public Records

List Agent listed a house in Huntersville for:

\$299,500 with 1580 sq.ft. and 3 bedrooms

Buyers' offer for \$300,000 was accepted and they spent \$1,340 on inspections and other fees.

The appraiser for the bank appraised the house for:

\$290,000 with 1464 sq.ft. and 2 bedrooms

Buyers asked to negotiate the contract price due to the misrepresentation of square footage and bedroom count. Sellers refused. Buyers terminated after due diligence, forfeited \$1000, and wanted \$2,340 from Listing Agent. Listing Agent refused to pay so Buyers filed a complaint.

Strangely, Listing Agent did not write her own response to the Commission and did not hire an attorney. Listing Agent responded via a letter written by another agent in her office who signed the letter, along with the BIC, and the Listing agent. The explanation was that Listing Agent must have "transposed the square footage as 1580" and "simply put down the last number on her mind" after looking at the tax records. Listing Agent, upon realizing her mistake, changed the square footage in the MLS and then notified the appraiser and buyer agent of the change. Most of the 4-page response letter was a rant against the appraiser because he used comparables sales that he did not personally measure, that he "failed to communicate," he

questioned Listing Agent on the square footage, asked for her measurements but would not “engage” when Listing Agent asked him for clarification, “would not discuss measurements once Listing Agent attempted to clarify,” and “would not communicate or confirm” her measurements. Listing Agent’s co-worker also complained that the buyer agent “did not verify the measurements with their own measuring.”

The author of the letter referenced the firm's company policy that requires all agents “to personally measure” each listing, create a floor plan that shows the measurements, and to verify the accuracy of the total square footage prior to submitting the property to MLS. In addition, the policy calls for agents to seek the guidance of an appraiser or professional measurer for difficult floor plans. The letter notes that Listing Agent acknowledges these best practices.

On the bedroom issue, the author of the letter noted that the space had been designed as a bedroom but the door had been removed and it was being used as an office. They cited a Commission article and argued that a buyer could reattach the door that was stored in the attic and use the space as a bedroom.

Discussion scenario is based on NC Real Estate Commission Case #D19-0205

Discussion Questions

1. What are your thoughts on Listing Agent not being able to write her own response letter? Is it an unauthorized practice of law for the other agent to write the letter for her? Did the author of the letter do a good job?
2. What does the Commission’s “Yellow Book” say about a buyer agent relying on the listing agent’s square footage?
3. What is your firm policy on square footage?
4. Is it ok for appraisers to provide information to the agents in transaction?
5. Are appraisers expected to measure the comparable sale?

Civil Cases

Case 1: The Neighbor and The View

Sellers entered a listing agreement with Broker to sell their home at 821 Havenhurst Point, La Jolla, California. The multiple wide-range stunning views of the Pacific Ocean were a major feature of this 5 bedroom, 5 bath, 4,262 sq.ft. property.

Broker hosted an open house and Neighbor visited. Neighbor told Broker of his detailed plan to extensively remodel his house, which was next door, and noted that it would significantly impact the listed property. Neighbor disclosed his plans to: (1) extend the footprint of his house to within 5 feet of the property line, (2) construct a new 2-story wing with large windows that would overlook the listed property's pool area, (3) take up to two years to complete, and (4) require extensive excavation and removal of several hundred yards of dirt.

Broker kept this information from Seller and all potential buyers.

Buyers, from out-of-state, purchased the property for \$3.86 million with Broker collecting a \$96,500 commission. Broker never disclosed Neighbor's plans or the impact they would have on the westerly view and overall privacy of the property.

The day after closing, Neighbor saw Buyer's interior decorator at the property and told her of his remodeling plans. Buyers immediately attempted to rescind the sale based on the magnitude and scope of the known but undisclosed plans. Sellers refused, partly from advice given by Broker. Buyers demanded arbitration per the contract.

The arbitrator ordered the contract be rescinded, \$3.86 million be returned to Buyers, and that title and possession be transferred back to Sellers. In addition Sellers were ordered to pay fees Buyer's damages, interest, costs, and attorney fees of over \$1 million.

The arbitrator's findings provided that Neighbors' "construction project was a material fact affecting the value or desirability of the property" and that Broker's failure to inform the Sellers about the neighbor's project was a breach of his agency obligations. In noting that Broker lacked a credible explanation for why he did not inform the Sellers or Buyers, the arbitrator wrote that, "One is left to speculate whether a 21-day, all cash escrow, that would garner a \$96,500 commission, were considerations."

Discussion Scenario Based on: *Ryan v. Pacific*, 32 Cal.App.5th 637

Discussion Questions

1. Do neighbors visit open houses? Why?
2. Why would out-of-state buyers who are unfamiliar with the area not engage a buyer agent?
3. Why was the construction project a material fact?
4. Was Broker obligated to inform Seller? Buyer?
5. Where in the Code of Ethics can you find this statement? "The term Realtor® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal?"
6. Why did the Buyer sue the Seller?
7. Does Seller have any recourse?

Case 2: Competing with the Buyer

Buyer hired Agent to help him purchase real estate in Queens, NY. While acting as Buyer's agent, Agent became interested in the property she was showing Buyer and started negotiating with the sellers on her own behalf at the same time as she was representing Buyer.

Agent submitted two offers of \$440,000; one for Buyer and one for herself. The offers had most of the same terms but Agent's offer had an \$80,000 down payment while Buyer's offer had a \$40,000 down payment. When the sellers accepted Agent's offer, she simply told Buyer that the seller had accepted another offer without disclosing that it was her offer.

Buyer learned of Agent's actions and sued her on February 20, 2019. The case is ongoing as the parties are filing various motions. One motion quotes language from Article 1 and Article 4 of the Code of Ethics of Practice of the National Association of Realtors.

Discussion Scenario Based on: *Edwards v. Walsh*, 169 A.D.3d 865

Discussion Questions

1. Anybody ever seen this in the real world?
2. What language in Article 1 applies to this scenario?
3. What language in Article 4 applies to this scenario?

Case 3: Termination Agreement Effective Date

Broker entered into a listing agreement with the Sellers on March 22 to list their home in Cary. Broker worked as the Sellers' agent and got an offer from Buyers which was rejected. After this rejection, the Sellers informed Broker that they wished to terminate the listing agreement. Broker emailed an unsigned termination agreement to Sellers on April 22. The termination agreement stated that it must be signed by both parties to be effective. The Sellers signed the termination on April 22.

The Sellers then met with Buyers and began negotiations for the sale of the property without Broker's knowledge. The Sellers went back and forth for a few days with Buyers presenting a written offer on May 9.

On May 10, Broker executed the termination on behalf of her firm.

On May 11, Sellers signed Buyers' offer and closed on June 26 for \$1,450,000.

Broker sued the Sellers for the commission on the sale. She argued that the Sellers breached the duty of dealing in good faith when they began negotiating directly with Buyers

while the listing agreement was active. Broker further argued that she had introduced Buyers to the property leading to the offer that was rejected. All this without notifying Broker and while the termination agreement was being processed.

Broker sued Sellers in Wake County Superior Court for the sales commission.

The Sellers argued that the email sent by Broker constituted an offer to terminate the listing agreement and all they had to do was accept it. They submit that the termination took effect as soon as they signed it on April 22 and that, after signing it, they were free to act without Broker being involved.

Broker argued that the listing agreement was still in effect at the time of negotiations and offer because the termination agreement was fully executed by both parties on May 10.

The Superior Court ruled for Sellers and dismissed the case. Broker appealed.

The Court of Appeals voted 2-1 to reverse and remand the case back to Superior Court to be reheard because there is a genuine issue of material fact as to whether Sellers breached their duty of good faith and fair dealing.

Discussion Scenario Based on: *Blondell v. Ahmed*, 247 N.C. App. 480 (2016).

Discussion Questions

1. How often does this happen?
2. When do you think the termination agreement was effective?
3. How did Broker learn that the house had sold?
4. Is it a violation of the Code of Ethics to sue your client?
5. Is there another argument Broker could have made?

Criminal

Case 1: Offers on a Short Sale

Keith Colson obtained two loans totaling more than \$1.4 million to purchase land and construct a house on North Canyon Wash Circle in Mesa, Arizona. When Colson defaulted on the loans, the lenders did not commence foreclosure proceedings but allowed him to conduct a short sale.

James Thorton, a part-time broker, was asked to list the house. Before activating the listing, Thorton convinced Colson to remove various items from the house to include custom kitchen appliances, light fixtures, and the pool pump (which caused the pool water to turn green.)

Thorton listed the house on MLS for \$580,000 as a short sale. He understated the square footage, number of bedrooms, and number of bathrooms. In “Public Remarks,” he painted a very bleak picture of the house stating that appliances and fixtures were missing, the pool was in disrepair, the house needed repairs and restoration throughout, and that “buyers must be patient.” He left out the RV garage, casita, library, and media room. Only one obstructed photo from the street was included. In general, Thorton portrayed the property in as negative light as he could.

Despite his efforts at scaring away buyers, Thorton received 12 offers ranging from \$525,000 to \$870,000 with 7 over the asking price. The \$870,000 offer was from a pre-approved buyer who offered a \$440,000 cash down payment with a non-refundable earnest money deposit. Thorton withheld the \$870,000 offer and 10 other offers from Colson and the lenders.

He presented only the \$525,000, which included a refundable deposit, to Colson. This offer was from an LLC owned by(ready for this?).....(wait for it).....his parents! Colson accepted the offer. It was then presented to the lenders who, believing that this was the only offer on the property, chose to negotiate this offer. The parties agreed on \$580,000.

After closing and receiving a commission on the sale, Thorton returned the appliances, cleaned up the pool, and generally spruced up the place for his parents. He then listed the house in MLS for \$1,100,000 with glowing positive remarks and raved about the “vacation retreat luxury home” that was “magnificent” and “meticulously move-in ready for the discriminating buyer.” He touted all the wonderful features including “top of the line” fixtures and appliances,

heated pool with waterfall and barbeque area, natural stone travertine granite, and much much more. He featured 45 photographs. Ten weeks later the house sold for \$1,050,000. A profit of \$470,000 or 81% with Thornton again receiving a commission.

Two prospective buyers noticed the low purchase price along with the rapid increased resell price and complained to the FBI. Thornton was indicted on two counts: (1) fraudulent schemes and artifices and (2) theft. Following the jury's guilty determination, the court imposed a prison sentence of 3 years followed by 6 months of probation.

Thornton appealed his conviction arguing, among other things, that "he could not steal something that did not actually exist" and a mortgage does not exist. The Court of Appeals noted that "property" can be "anything of value, tangible or intangible." The conviction was upheld.

Discussion Scenario Based on: *State v. Thornton*, 2019 Ariz.App. Unpub. LEXIS 518

Discussion Questions

1. What's the process of a short sale?
2. Any reasonable defenses for Thornton's actions?
3. Which Article(s) of the Code of Ethics did Thornton violate?