NATIONAL ASSOCIATION OF REALTORS®

Summary of Key Professional Standards Changes for 2023

(Underscoring indicates additions; strikeouts indicate deletions)

This summary highlights substantive issues and changes. To see the 2022 Professional Standards Committee Actions for the REALTORS® Legislative Meetings and the NAR NXT, visit nar.realtor. Also, review the shaded portions of the 2023 *Code of Ethics and Arbitration Manual* (Manual) which highlights all the changes.

Overview

- Revisions to Article 10 and Standards of Practice 10-3, 10-5, and 3-11, deleting “handicap” and instead inserting “disability”. Same change made to Appendix III to Part Four, Responsibility of Member Boards with Respect to Article 10 of the Code of Ethics; Appendix VII to Part Four, Sanctioning Guidelines (Example C of Progressive Discipline); Appendix XII to Part Four, Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29
- Revision to Standard of Practice 3-9
- Revision to Section 1, Definitions Relating to Ethics, to define the phrase "Real Estate Professional" for purposes of Article 15 as those engaged in the disciplines of real estate specified in Article 11 of the Code of Ethics
- Amendments to Manual under “Definitions” (Section 1 and Section 26); Appendix XI to Part Four - Ethics Mediation; Appendix VI to Part Ten – Mediation as a Service of Member Boards; and other relevant online resources for ombuds to clarify that the prohibition of serving in more than one capacity in an ethics or arbitration matter also applies to ombuds and mediators
- Amendments to Part Four, Section 20, Initiating an Ethics Hearing, and Appendix V to Part Four, Ethics Hearing Checklist, to ensure consistent understanding of the Grievance Committee’s role as referenced in Section 17 – 19 of the Manual
- Amendment to Section 20 (a), Initiating an Ethics Complaint, to clarify that hearings cannot be heard anonymously; any complaint referred for hearing must include a complainant (e.g., member of the grievance committee) to shoulder the burden of proof
- Amendment to Section 20 (j), Initiating an Ethics Complaint, as it relates to the expedited hearing process; grievance committees now have the latitude to determine if the conduct alleged in the complaint is sufficiently egregious (e.g., public trust issue) to warrant a hearing rather than a waiver to a right to a hearing

- Amendments to Section 21 (b), Ethics Hearing, and Section 23 (j), Action of the Board of Directors, of the Manual to remove the Board President from the process of receiving a copy of an ethics complaint upon referral for hearing and disseminating the ethics complaint, response, and the appeal decision, instead having that action carried out by the Professional Standards Administrator. Same changes made to Appendix V to Part Four, Ethics Hearing Checklist (38); Chairperson's Procedural Guide Conduct of an Ethics Hearing; Chairperson's Procedural Guide Conduct of an Appeal Hearing (Ethics); Chairperson's Procedural Guide Conduct of a Procedural Review Hearing (Arbitration); Chairperson's Procedural Guide Conduct of a Procedural Review Hearing (Interboard Arbitration)
- Enhancements to Sections 44 (a)(1) and 44 (a)(2), Duty and Privilege to Arbitrate, of the Manual, and Professional Standards Policy Statement #2, Circumstances Under Which REALTORS® Must Submit to Arbitration, and all corresponding references in NAR policy and resources to clarify that only REALTOR® principals can invoke arbitration with other REALTOR® principals. REALTOR® non-principals are not considered parties in a mandatory arbitration between REALTOR® principals of different firms.
- Amendment to Professional Standards Policy Statement #45, Publishing the Name of Code of Ethics Violators, and the Model Citation Policy to clearly state that citations may be considered in any publication of violations should such rules be adopted by an association
- Standard of Practice 1-8 added to the Model Citation Policy, Schedule of Fines; Standard of Practice 3-9 was also amended in the Schedule of Fines
- Minor amendments to modernize 24 case interpretations found on-line; search for the *Interpretations of the Code of Ethics*
- Deleted Case Interpretation #2-9, REALTOR®'s Responsibility for REALTOR®'s Statement
- Three new Case Interpretations adopted (#17-14, #17-15, #17-16) all titled Arbitration in Non-Contractual Disputes, related to Standard of Practice 17-4

Changes to the Code of Ethics and Standards of Practice

(underscoring indicates additions, strike outs indicate deletions)

Article 10 was amended as follows:

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, ~~handicap~~ disability, 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~~ disability, familial status, national origin, sexual orientation, or gender identity.

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, ~~handicap~~ disability, familial status, national origin, sexual orientation, or gender identity.

Note: The term "handicap" is also replaced with "disability" in all the Standards of Practice, and in all corresponding references to the protected classes within NAR policy and resources.

Standard of Practice 3-9 was amended as follows:

REALTORS® shall not provide access to listed property on terms other than those established by the owner or ~~the listing broker~~ the seller.

Changes to the *Code of Ethics and Arbitration Manual*

(underscoring indicates additions, strike outs indicate deletions)

Section 1, Definitions Related to Ethics, Article 15:

(w) "Real Estate Professionals", for purposes of Article 15, are those engaged in the disciplines of real estate specified in Article 11.

Amendments to Section 1 and 26, Definitions Related to Ethics and Arbitration, respectively. Change also added to Appendix XI to Part Four, Ethics Mediation, and Appendix VI to Part Ten, Mediation as a Service of Member Boards

Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service.

Section 20 (a), Initiating an Ethics Hearing, Processing Anonymous Complaints:

Anonymous complaints other than those allowed for in the association's citation policy are prohibited. If the association's citation policy allows for anonymous complaints and the individual who brought the allegations chooses to remain anonymous, any complaint referred for hearing must include a complainant (e.g., a member of the Grievance Committee) to shoulder the burden of proof.

Amendments to Part Four, Section 20 (a) and (d), Initiating an Ethics Hearing; and Appendix V to Part Four, Ethics Hearing Checklist

Section 20(a): Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a complaint in writing in their own name with the Professional Standards Administrator, dated and signed by complainant, stating the facts on which it is based (Form #E-1, Complaint, **Part Six**), provided that the complaint is filed within one hundred eighty (180) days after the alleged offense and facts relating to it ~~facts constituting the matter complained of~~ could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the

conclusion of the transaction or event, whichever is later....

~~The procedures for processing complaints alleging violations of an Association's bylaws prohibiting harassment are available on-line at Realtor.org, and those procedures do not involve an Association's Grievance Committee, Professional Standards Committee, or Board of Directors.~~

Note: Above paragraph deleted as these procedures no longer exist.

Section 20(d), second paragraph: If the Grievance Committee feels that the respondent's alleged conduct may be the basis for a violation but that an inappropriate Article(s) has been cited or that other applicable Articles have not been cited, the Grievance Committee may amend the complaint by deleting any inappropriate Article(s) and/or by adding any appropriate Article(s) and/or individuals to the complaint. If the complainant disagrees with the deletion of an Article(s) from the complaint, the complainant may appeal to the Board of Directors requesting that the original complaint be forwarded to a Hearing Panel as filed using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's dismissal. If the Grievance Committee determines that an Article(s) or an additional respondent(s) should be added to the complaint and the complainant will not agree to the addition, the Grievance Committee may file its own complaint and both complaints will be heard simultaneously by the same Hearing Panel.

Appendix V to Part Four, Ethics Hearing Checklist, (3) Time Limitation: An ethics complaint must be filed within one hundred eighty (180) days after the alleged offense and facts relating to it ~~facts constituting the matter complained of~~ could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later.

Section 20 (j), Initiating an Ethics Hearing, Expedited Hearing Procedures:
Notwithstanding the foregoing, in the event the members of the Grievance Committee determine the conduct described in the

complaint is sufficiently egregious (e.g., public trust issues) to warrant a hearing rather than a waiver to a right to a hearing, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the *Code of Ethics and Arbitration Manual* for ethics hearings.

Section 21 (b), Ethics Hearing; Section 23 (j), Board of Directors:
Section 21 (b):
The Professional Standards Administrator shall provide a copy of the reply (if any) to the complainant within five (5) days from receipt of the response. The Professional Standards Administrator shall also provide copies of the complaint and reply (if any) to the ~~Board President and~~ Chairperson of the Professional Standards Committee, or notify ~~each~~ the Chairperson that no reply has been filed (unless the ~~President and/or~~ Professional Standards Chairperson indicates that they do not wish to receive copies or be so informed).

Section 23 (j):
Upon final action by the Directors, the ~~President~~ Professional Standards Administrator shall disseminate to the complainant, the respondent, the Chairperson and members of the Hearing Panel, Association legal counsel, the ~~President~~ Professional Standards Administrator of any other Association in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Association legal counsel prior to dissemination.

Section 44 (a) (1) and Section 44 (a)(2), Duty and Privilege to Arbitrate; Professional Standards Policy Statement #2, Circumstances Under Which REALTORS® must Submit to Arbitration, to clarify that only REALTOR® principals can invoke arbitration

Section 44 (a) (1) and (2):
(1) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the

Board's MLS. REALTOR® nonprincipals and REALTOR ASSOCIATE®s who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome have the right to be present throughout the proceedings and to participate but are not considered to be parties.

(2)~~A REALTOR® other than a principal or a REALTOR ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided~~ the REALTOR® principal with whom he is associated joins in the arbitration ~~request, and requests the arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both). REALTOR® nonprincipals and REALTOR ASSOCIATE®s who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties.~~

Professional Standards Policy Statement #2

(a)Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. REALTOR® nonprincipals and REALTOR ASSOCIATE®s who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome have the right to be present throughout the proceedings and to participate but are not considered to be parties.

(b)~~A REALTOR® other than a principal or a REALTOR ASSOCIATE® shall have the right to invoke the arbitration facilities of the Board in a business dispute with a REALTOR® or REALTOR ASSOCIATE® in another firm or with their firm (or both), whether in the same or a different Board, provided the REALTOR® principal with whom he is associated joins in the arbitration request, and requests arbitration with the REALTOR® principal of the other firm or with their firm (or both). Arbitration in such cases shall be between the REALTOR® principals or their firms (or both).~~

~~REALTOR® nonprincipals and REALTOR ASSOCIATE®s who invoke arbitration in this manner, or who are affiliated with a respondent and have a vested financial interest in the outcome, have the right to be present throughout the proceedings and to participate but are not considered to be parties.~~

Amendment to Professional Standards Policy Statement #45, Publishing the Names of Code of Ethics Violators, and Model Citation Policy to clearly state that citations may be considered in any publication of violations should such rules be adopted by an association.

Professional Standards Policy Statement #45, Option 1:

…Ethics citation discipline ~~is not~~ may be included in the violation count ~~unless~~ if the association has affirmatively authorized publication within their citation policy.

Model Citation Policy:

III. Citations ~~will not~~ may be considered in any publication of violations should such rules be adopted by the association.

IV. Where a hearing panel finds a violation of the Code of Ethics after a hearing, it may consider past citations in determining an appropriate sanction only if the citation was issued for the same violation at issue in the hearing. By way of example, if a citation was issued for failure to disclose a dual or variable rate commission under Standard of Practice 3-4, that citation could not be considered if a hearing panel later found a violation of Article 3 on some other grounds. Hearing panels will not be informed of past citations for other violations.

V. Association staff will track the number of citations issued, the number of citations paid, and the violations for which citations were issued. This information may be provided in the aggregate to the Board of Directors, but will not include details about the complaints, nor identify the complainants or respondents.

VI. The allegations, discussions and decisions made in the citation process are confidential and shall not be reported

or published by the board, any member of a tribunal, or any party under any circumstances except those established in Limitations, Sections III and V of this policy and the Code of Ethics and Arbitration Manual of the National Association as from time to time amended.

Changes to the Interpretations of Code of Ethics

Note: All changes to be published online at nar.realtor in January 2023

Case # 2-9, REALTORS® Responsibility for REALTOR® ASSOCIATE®'s Statement, deleted but expected to be rewritten in 2023, so watch for a new case to take it's place.

Three new case Interpretation related to Standard of Practice 17-4:

Case Interpretation #17-14: Arbitration in Non-Contractual Disputes
REALTOR® A entered into an exclusive buyer representation agreement with a client (referred to herein as "Prospective Buyer"), showing her several homes over a period of time. The Prospective Buyer made offers on two homes with REALTOR® A, both of which were not accepted.

REALTOR® A then presented the Prospective Buyer with a property recently back on the market, listed by REALTOR® B. REALTOR® A and REALTOR® B were REALTOR® principals in different firms, and were both members of the same MLS. The Prospective Buyer told REALTOR® A that she had seen the property with REALTOR® C, a REALTOR® principal of a different firm, when it came on the market several weeks earlier. She also told REALTOR® A that she had written an offer on the property with REALTOR® C that was not accepted because of multiple offers being submitted.

The Prospective Buyer said she wanted to write a new offer on the property with REALTOR® A and did not want to go back to REALTOR® C since it had been a while and she wanted to start fresh with a different REALTOR®. REALTOR® A suggested that the Prospective Buyer could compensate REALTOR® A directly under the terms of the buyer representation agreement and REALTOR® A would reject the offer of compensation from the listing broker, REALTOR® B. The Prospective Buyer agreed, REALTOR® A rejected the offer of compensation from the listing broker and the offer was submitted. REALTOR® B agreed to reduce his compensation by the amount that was offered in MLS and rejected by REALTOR® A. The seller accepted the Buyer's offer with the reduced compensation offered by REALTOR® B and the transaction closed.

REALTOR® C learned that the Buyer had purchased the property and believed that she was the procuring cause of the sale based on the previous work she had done with the Buyer and the offer she had previously written for her on the property. REALTOR® C was a REALTOR® principal in the same MLS as listing broker, REALTOR® B. REALTOR® C filed an arbitration request against the listing broker, REALTOR® B for the amount offered in MLS. After receiving the request, REALTOR® B then filed an arbitration request against REALTOR® A for the amount offered in MLS and requested that the two arbitration requests be consolidated into one hearing.

The Grievance Committee reviewed REALTOR® C's request and found it to be a contractual dispute under Article 17 in that REALTOR® C's claim was that she was the procuring cause of the sale and thus had accepted the offer of compensation made by REALTOR® B. The Grievance Committee also found that it was a mandatory arbitration under Article 17 for the amount requested.

In reviewing REALTOR® B's arbitration request against REALTOR® A, the Grievance Committee noted that there was no contractual dispute under Article 17 because REALTOR® A had rejected listing broker REALTOR® B's offer of compensation. However, the Grievance Committee found that REALTOR® B's request was a noncontractual dispute within Standard of Practice 17-4 (3) in that REALTOR® B filed the request against REALTOR® A as a third-party respondent. The request was found to be a mandatory arbitration matter for the amount requested.

The Grievance Committee also discussed that REALTOR® C could have filed an arbitration request directly against REALTOR® A as a noncontractual dispute under Standard of Practice 17-4 (3) for the amount offered in MLS. In its discussion, the Grievance Committee further noted that Standard of Practice 17-4 (3) does not include any limitation as to the amount received by the cooperating broker or paid by the seller as exists in Standard of Practice 17-4 (1) and (2).

Case #17-15: Arbitration in Non-Contractual Disputes

REALTOR® A, a REALTOR® principal, worked with his client (referred to herein as "Buyer") on several properties. The Buyer wanted to write an offer on an expensive property that would generate (based on the offer price and the amount offered in the MLS) a $40,000 commission for REALTOR® A and his firm. When writing the offer, The Buyer explained that she wanted REALTOR® A to reduce his portion of the commission by half (by $20,000) to make the price of their offer attractive to the seller. REALTOR® A refused to reduce his commission as requested and the Buyer then refused to write the offer with REALTOR® A.

The Buyer then approached REALTOR® B to view the property again. The Buyer did not disclose that she had seen the property or attempted to write an offer on the property with REALTOR® A. When the Buyer asked to write the offer, she suggested that REALTOR® B reduce the compensation offered in MLS to $20,000 so that her offer price was more attractive to the seller. REALTOR® B agreed to accept the reduced compensation. REALTOR® B presented the offer to the listing broker, REALTOR® C, and explained the reduced compensation. REALTOR® C presented the offer to the seller and agreed to reduce the total commission by $20,000. The seller accepted the offer and the transaction closed.

After learning that the Buyer had purchased the property through REALTOR® B, REALTOR® A filed an arbitration request against the listing broker, REALTOR® C for the amount offered in MLS, or $40,000. REALTOR® A's request stated that he was the procuring cause of the sale and thus had accepted REALTOR® C's offer of compensation in the MLS. REALTOR® C then filed an arbitration request against REALTOR® B for $40,000, requesting that the two cases be consolidated for one hearing. REALTORS® A, B and C are each REALTOR® principals, are all associated with different firms, and are members of the same MLS.

After reviewing REALTOR® A's arbitration request against REALTOR® C, the Grievance Committee determined that the matter was a mandatory arbitration as a contractual dispute under Article 17 for the amount offered in MLS ($40,000) based on REALTOR® A's claim that he was the procuring cause of the sale. Likewise, the Grievance Committee determined that REALTOR® C's request against REALTOR® B was also a mandatory arbitration as a contractual dispute under Article 17. However, since the alleged contractual matter between REALTOR® C and REALTOR® B was for an amount of $20,000, REALTOR® C's claim against REALTOR® B was limited to $20,000.

The Grievance Committee also discussed that REALTOR® A could have filed an arbitration request directly against REALTOR® B as a noncontractual dispute under Standard of Practice 17-4 (1) for the amount REALTOR® B received ($20,000) per the terms of Standard of Practice 17-4 (1) providing that "…the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker…"

Case #17-16: Arbitration in Non-Contractual Disputes
REALTOR® C listed a property that was shown by REALTOR® A to REALTOR® A's client, referred to herein as "Prospective Buyer". REALTOR® C and REALTOR® A were REALTOR® principals in different firms. REALTOR® A was required to go out of town on a family emergency and had REALTOR® B in her firm take over for her, communicating that fact to the Prospective Buyer.

Prospective Buyer asked REALTOR® B to show the same listing to him again. REALTOR® B showed the listing to the Prospective Buyer. The Prospective Buyer did not like REALTOR® B's conduct during the showing. The Prospective Buyer wanted to write an offer on the property but did not want to write the offer with REALTOR® B and did not want to wait for REALTOR® A to return.

The Prospective Buyer then contacted REALTOR® D, an agent with a different firm who was recommended, to write an offer on the property, telling REALTOR® D that he had seen it with REALTORS® A and B, but would not work with REALTOR® B and could not wait for REALTOR® A to return.

REALTOR® D suggested writing an offer in which the Prospective Buyer agreed to pay REALTOR® D directly. The Prospective Buyer agreed on condition that REALTOR® D reduced her compensation by a certain percentage from what was offered in the MLS. REALTOR® D agreed. REALTOR® D presented the offer, rejecting the offer of compensation in MLS. Listing broker REALTOR® C and the seller agreed to the compensation reduction. The offer was accepted, and the transaction closed.

REALTOR® A learned that the Buyer had purchased the Property through REALTOR® D. REALTOR® A filed an arbitration request against listing broker REALTOR® C for the amount offered in MLS. REALTOR® C then filed an arbitration request against REALTOR® D for the amount offered in MLS, requesting the cases to be consolidated into one hearing.

The Grievance Committee reviewed REALTOR® A's request and found it to be a contractual dispute under Article 17 in that REALTOR® A's claim was that she was the procuring cause of the sale and thus had accepted the offer of compensation made by REALTOR® C. The Grievance Committee also found that it was a mandatory arbitration under Article 17 for the amount requested.

In reviewing REALTOR® C's arbitration request against REALTOR® D, the Grievance Committee noted that there was no contractual dispute under Article 17 because REALTOR® C had rejected listing broker REALTOR®

C's offer of compensation. However, the Grievance Committee found that REALTOR® C's request was a noncontractual dispute within Standard of Practice 17-4 (3) in that REALTOR® C filed the request against REALTOR® D as a third-party respondent. The request was found to be a mandatory arbitration for the amount requested.

The Grievance Committee also discussed that REALTOR® A could have filed an arbitration request directly against REALTOR® D as a noncontractual dispute under Standard of Practice 17-4 (3) for the amount offered in MLS. In its discussion, the Grievance Committee further noted that Standard of Practice 17-4 (3) does not include any limitation as to the amount received by the cooperating broker or paid by the seller as exists in Standard of Practice 17-4 (1) and (2).

Minor Amendments to Modernize 24 of the Case Interpretations, as follows:

(underscoring indicates additions, strike outs indicate deletions)

Case #1-1: Fidelity to Client

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

Client A complained to an ~~Board~~ Association of REALTORS® that two of its members, REALTORS® B and his sales associate, REALTOR-~~ASSOCIATE®~~ C, had failed to represent the client's interests faithfully by proposing to various prospective buyers that a price less than the listed price of a house be offered. His complaint specified that REALTOR® B, in consultation with him, had agreed that ~~$137,900~~ $400,000 would be a fair price for the house, and it had been listed at that figure. The complaint also named three different prospective buyers who had told Client A that while looking at the property, REALTOR-~~ASSOCIATE®~~ C, representing REALTOR® B, when asked the price had said, "It's listed at ~~$137,900~~ $400,000, but I'm pretty sure that an offer of ~~$130,000~~ $360,000 will be accepted."

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

During the hearing, REALTOR® B confirmed that he had agreed with Client A that ~~$137,900~~ $400,000 was a fair price for the house, and that it was listed at that figure. He added that he had asked for a 90-day listing contract as some time might be required in securing the full market value. Client A had agreed to do this but had indicated that he was interested in selling within a month even if it meant making some concession on the price. The discussion concluded with an agreement on listing at ~~$137,900~~ $400,000 and with REALTOR® B agreeing to make every effort to get that price for Client A.

REALTOR-~~ASSOCIATE®~~ C said in the hearing that REALTOR® B had repeated these comments of Client A and he, REALTOR-~~ASSOCIATE®~~ C, had interpreted them as meaning that an early offer of about 10 percent less than the listed price would be acceptable to the seller, Client A. Questioning by the Hearing Panel established that neither REALTOR® B

nor REALTOR-~~ASSOCIATE®~~ C had been authorized to quote a price other than ~~$137,900~~ $400,000.

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

Case #1-2: Honest Treatment of All Parties
(Originally Case #7-2. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #2-18.)

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

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

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

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

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

Client A called REALTOR® B to list a small commercial property, explaining that he wanted to net at least ~~$170,000~~ $370,000 from its sale. He inquired about the brokerage commission and other selling costs. REALTOR® B's response was: "You have indicated that ~~$170,000~~ $370,000 net to you from the sale will be satisfactory. Suppose we just leave it at that and take all of the selling costs from the proceeds of the sale above ~~$170,000~~ $370,000." Client A agreed.

The property was sold to Buyer C for ~~$220,000~~ $420,000. After settlement, in which it was apparent that $50,000 would go to REALTOR® B as commission, Client A and Buyer C both complained to the ~~Board~~ Association of REALTORS® about REALTOR® B's conduct in the matter, and a hearing was scheduled before the ~~Board's~~ Association's Professional Standards Committee.

REALTOR® B's defense was that he had performed the service that Client A engaged him for precisely in conformance with their agreement. Buyer C had considered the property a good buy at ~~$220,000~~ $420,000 and was happy with the transaction until he learned the amount of the commission.

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

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

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about ~~$50,000~~ $150,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of ~~$32,500~~ $97,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of ~~$32,500~~ $97,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to ~~$50,000~~ $150,000 than ~~$32,500~~ $97,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at ~~$55,000~~ $165,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for ~~$32,500~~ $97,500.

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

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

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

Case #1-5: Promotion of Client's Interests
(Originally Case #7-6. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A gave an exclusive listing on a house to REALTOR® B, stating that he thought ~~$132,500~~ $399,000 would be a fair price for the property. REALTOR® B agreed and the house was listed at that price in a 90-day listing contract. REALTOR® B advertised the house without response, showing it to a few prospective buyers who lost interest when they learned the price. In a sales meeting in his office, REALTOR® B discussed the property, advised his associates that Client A had insisted on the list price and it was now clear that it was ~~it appeared to be~~ overpriced since there had been few showings and no offers~~., and that advertising and showing of the property had proved to be a waste of time and money.~~

After six weeks had gone by without a word from REALTOR® B, Client A called REALTOR® B's office without identifying himself, described the property, and asked if the firm was still offering it for sale. The response he received from one of REALTOR® B's nonmember associates was: "Yes, it's still on the market." After some additional conversation, the associate told Client A that she had heard at a sales meeting that the price was high so it wasn't getting much activity. The associate then asked if Client A would be interested in some other similar properties which were listed at lower prices. ~~We still have the house listed, but there is little interest in it because, in our opinion, it is overpriced and not as attractive a value as other property we can show you."~~

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

In a hearing on the complaint before a Hearing Panel of the ~~Board's~~ Association's Professional Standards Committee, REALTOR® B's response was that Client A had emphatically insisted that he wanted ~~$132,500~~ $399,000 for the property; that by advertising and showing the property he had made a diligent effort to attract a buyer at that price; that in receiving almost no response to this effort he was obliged to conclude that the house would not sell at the listed price; that in view of the client's attitude at the time of listing, he felt it would be useless to attempt to get Client A's agreement to lower the listed price. ~~; and that he had instructed his staff not to actively market the property at that price.~~

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

Case #1-6: Fidelity to Client's Interests
(Originally Case #7-7. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

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

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

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

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

Case #1-7: Obligation to Protect Client's Interests
(Originally Case #7-8. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

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

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

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

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

Case #1-8: Knowledge of Essential Facts
(Originally Case #7-10. Reaffirmed May, 1988. Transferred to Article 1 November, 1994.)

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

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

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

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

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

Case #1-18: REALTOR® Not Responsible for Legal Advice
(Originally Case #2-4. Revised and transferred to Article 7 as Case #7-22 May, 1988. Transferred to Article 1 November, 1994.)

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

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

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

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

Case #1-20: REALTORS® Buying and Selling to One Another are Still Considered REALTORS®
(Originally Case #7-24. Revised May,1988. Transferred to Article 1 November,1994. Cross- reference Case #2-13.)

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

A few months later, during hard rains, leakage of the roof occurred with resultant water damage to the interior ceilings and side walls. REALTOR® B had a roofing contractor inspect the roof.

The roofing contractor advised REALTOR® B that the roof was defective and advised that only a new roof would prevent future water damage.

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

At the subsequent hearing, REALTOR® B outlined his complaint and told the Hearing Panel that at no time during the inspection of the property, or during the negotiations which followed, did REALTOR® A disclose any defect in the roof. REALTOR® B acknowledged that he had walked around the property and had looked at the roof. He had commented to REALTOR® A that the roof looked reasonably good, and REALTOR® A had made no comment. The roofing contractor REALTOR® B had employed after the leak occurred told him that there was a basic defect in the way the shingles were laid in the cap of the roof and in the ~~manner in which~~ way the metal flashing on the roof had been installed. It was the roofing contractor's opinion that the home's former occupant could not have been unaware of the defective roof or the leakage that would occur during hard rains.
REALTOR® A told the panel that he was participating only to prove that he was not subject to the Code of Ethics while acting as a principal as compared with his acts as an agent on behalf of others. He pointed out that he owned the property and was a principal, and that REALTOR® B had purchased the property for himself as a principal. The panel

concluded that the facts showed clearly that REALTOR® A, the seller, did have knowledge that the roof was defective, and had not disclosed it to REALTOR® B, the buyer. Even though a REALTOR® is the owner of a property, when he undertakes to sell that property, he accepts the same obligation to properly represent its condition to members of the public, including REALTORS® who are purchasers in their own name, as he would have if he were acting as the agent of a seller.

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

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

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

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

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

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

Several weeks later, REALTOR® B received a letter from Attorney T, representing Mr. and Mrs. A. Attorney T's letter indicated that since a member of REALTOR® B's firm had purchased the property, in Attorney T's opinion, REALTOR® B was not entitled to a commission. The letter went on to demand that REALTOR® B refund the commission that had been paid by Mr. and Mrs. A. REALTOR® B politely, but firmly, refused to refund the commission. Mr. and Mrs. A filed a complaint with the ~~Board~~ Association of REALTORS® alleging that REALTOR® B's refusal to refund the commission constituted a violation of Article 1 of the Code of Ethics.

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

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

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

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

Case #1-22: REALTOR®'s Offer to Buy Property He Has Listed
(Adopted May, 1989 as Case #7-26. Transferred to Article 1 November, 1994. Revised November, 2001.)

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

Consequently, Doctor A decided to sell the property and made an appointment with REALTOR® B whose office was located in a town nearby.

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

REALTOR® B explained that sales of vacation homes had been slow for a number of months and recommended a listing price of ~~$75,000~~ $175,000. When Doctor A commented that the price seemed low given that the house was located on a lake and included several wooded acres, REALTOR® B responded by asking Doctor A what he thought the property was worth. Doctor A repeated that he really had no idea what it was worth since he was completely unfamiliar with the area and concluded that he would have to rely on REALTOR® B's judgment. Doctor A and REALTOR® B executed an exclusive listing on the property and two days later Doctor A and his wife returned home.

Three weeks later, Doctor A received ~~a letter~~ a purchase contract for $175,000 from REALTOR® B ~~to which was attached a purchase contract for $75,000~~ less the amount of the listing commission signed by REALTOR® B as the purchaser. REALTOR® B's letter indicated his belief that Doctor A should not expect any other offers on the property due to the slow market and that REALTOR® B's "full price" offer was made to "take the property off Doctor A's hands."

Doctor A immediately called REALTOR® B and advised him that while he might agree to sell the vacation house to REALTOR® B, he would not

do so until he could have the property appraised by an independent appraiser. Under no circumstances, continued Doctor A, would he recognize REALTOR® B as his agent and pay a commission if REALTOR® B purchased the house.

REALTOR® B responded that there was no reason to obtain an independent appraisal since Doctor A had little choice in the matter. In REALTOR® B's opinion Doctor A could either sell the property to REALTOR® B for ~~$75,000~~ $175,000 less the amount of the commission or, should Doctor A refuse REALTOR® B's offer, REALTOR® B would be entitled to a commission pursuant to the listing agreement.

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

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

The ~~Board's~~ Association's Professional Standards Administrator referred Doctor A's ~~letter~~ complaint to the Grievance Committee which concluded that a hearing should be held. At the hearing before a panel of the ~~Board's~~ Association's Professional Standards Committee, both Doctor A and REALTOR® B told their sides of the story. After all of the evidence and testimony was heard, the Hearing Panel went into executive session and concluded that while the Code of Ethics did not prohibit REALTOR® B's offering to purchase property listed by him, REALTOR® B had stepped out of his role as agent and had become a principal in the transaction. Article 1 of the Code of Ethics requires the REALTOR® to "protect and promote the interests of the client." Once REALTOR® B expressed his interest in purchasing the property, he could

no longer act as Doctor A's agent except with Doctor A's knowledgeable consent. This consent had not been granted by Doctor A. Further, REALTOR® B's advice that Doctor A had no choice but to view REALTOR® B as his agent and to compensate him accordingly had been incorrect and had been a decisive factor in Doctor A's decision to sell to REALTOR® B. The Hearing Panel also found that REALTOR® B had significantly influenced Doctor A's decision as to the listing price, perhaps with knowledge that he (REALTOR® B) would like to purchase the property for himself. Consequently, the Hearing Panel found REALTOR® B in violation of Article 1.

Case #1-23: Claims of Guaranteed Savings
(Adopted November, 1993 as Case #7-27. Revised April, 1994. Transferred to Article 1 November, 1994.)

In response to REALTOR® A's advertisement, "Guaranteed Savings! Don't purchase without representation," Mr. and Mrs. B signed an exclusive buyer representation contract with REALTOR® A. After viewing several homes accompanied by REALTOR® A, Mr. and Mrs. B decided to make an offer on 1234 Hickory. The seller did not accept the offer. The listing broker explained to REALTOR® A that the sellers were well-situated, spent much of their time at their vacation home, and had determined not to accept anything other than the listed price.

REALTOR® A, in turn, explained that to Mr. and Mrs. B. In response to their questions, he indicated that there appeared to be little point in making anything other than a full price offer but that he would be happy to continue to show them other properties. Mr. and Mrs. B responded that they were not interested in other properties and had decided to make a full price offer on the Hickory Street residence. They did and their offer was accepted.

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

At the hearing, REALTOR® A ~~defended his advertisement on the basis that as a buyer's agent~~ argued he was able to aggressively negotiate purchase agreements on behalf of his clients whereas the listing broker or subagents, with their loyalty to the seller, could not. He also indicated that, in many instances, his buyer clients paid less, often substantially less, than buyers dealing through listing brokers, subagents, or even through other buyer agents.

However, in response to questioning by Mr. B's attorney, REALTOR® A acknowledged that, while savings were not uncommon, they were not ensured in every instance, particularly in cases where the seller was determined to receive full price. "But I offered to show them other properties and, if we looked long enough, I am sure I could have found them a bargain," offered REALTOR® A in his defense.

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

Case #1-24: Advantage Gained Through Deception of Client
(Originally Case #4-3. Revised and transferred to Article 6 as Case #6-5 May, 1988. Revised November, 1993. Transferred to Article 1 November, 1994. Revised November, 1997.)

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

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

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

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

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

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

Case #1-25: Disclosure of Latent Defects
(Adopted November, 2000.)

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

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

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

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

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

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

The Hearing Panel disagreed with Seller S's contentions. It noted that while REALTORS® do, in fact, have an obligation to preserve confidential information gained in the course of any relationship with the client, Standard of Practice 1-9 specifically provides that latent material defects

are not considered “confidential information” under the Code of Ethics. Consequently, REALTOR® A’s disclosure did not violate Article 1 of the Code of Ethics.

Case #1-27: Appraisal Fee as Percentage of Valuation
(Originally Case #11-7. Revised November 2001. Transferred to Article 1 November 2001.)

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

Client B, at REALTOR® A's suggestion, agreed to compensate REALTOR® A for his appraisal services based on a percentage of the amount of the appraised value to be determined.

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

Client B's complaint was considered by the ~~Board's~~ Association's Grievance Committee which, upon review, referred it to the ~~Board's~~ Association's Professional Standards Administrator to be scheduled for a hearing before a Hearing Panel of the ~~Board's~~ Association's Professional

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

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

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

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

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

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

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

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

Several months afterward, Seller S and REALTOR® A met at a social event. REALTOR® A related his conversation with REALTOR® B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Hearing Panel concluded that while REALTOR® Q had not expressly guaranteed Seller T her property would sell for $1,500,000, his statements had led her to that conclusion and after realizing Seller T was under that impression, REALTOR® Q had done nothing to disabuse

her of that misperception. Moreover, REALTOR® Q had taken no steps to explain the risks of an absolute auction ~~process~~ to Seller T, including making her aware that at an absolute auction the high bidder—regardless of the bid— would take the property. REALTOR® Q's actions and statements had clearly not protected his client's interests and, in the opinion of the Hearing Panel, violated Article 1.

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

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

REALTOR® A, acting as a ~~management agent~~ property manager, offered a vacant house for rent to a prospective tenant, stating to the prospect that the house was in good condition.

Shortly after the tenant entered into a lease and moved into the house, he filed a complaint against REALTOR® A with his ~~Board~~ association of REALTORS®, charging misrepresentation, since a clogged sewer line and a defective heater had been discovered, contrary to REALTOR® A's statement that the house was in good condition.

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

Case #2-3: Obligation to Disclose Defects
(Revised Case #9-9 May, 1988. Transferred to Article 2 November, 1994.)

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

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

REALTOR® B explained, however, that Seller A's description, which he had accepted, had resulted in misrepresentation to the buyer. "But it's a small point," said Seller A. "He'll probably use rugs too, so it really doesn't make any difference." After further pressure from REALTOR® B for some kind of adjustment for Buyer C, Seller A concluded, "It was an

honest mistake. It's not important. I'm not going to do anything about it. If Buyer C thinks this is a serious matter, let him sue me."

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

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

Case #2-4: Obligation to Ascertain Pertinent Facts
(Revised Case #9-10 May, 1988. Transferred to Article 2 November, 1994.)

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

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

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

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

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

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

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

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

The panel determined that the absence of a sewer connection in an area where other houses were connected was a substantial and pertinent fact in the transaction; but that the fact that the house was not connected to the sewer was not possible to determine in the course of a visual inspection and, further, that REALTOR® A had made

appropriate inquiries of the seller and was entitled to rely on the representations of the seller The panel concluded that REALTOR® A was not in violation of Article 2.

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

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

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

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

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

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

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

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

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

At the hearing, REALTOR® A took responsibility for the prospectus, acknowledging that he had worked with the former owner in its preparation. The former owner had built the motel and operated it for five years. REALTOR® A explained that he had advised him that

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

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

REALTOR® A was found in violation of Article 2.

Case #2-10: Use of State Revenue Stamps to Mislead
(Reaffirmed Case #9-16 May, 1988. Transferred to Article 2 November, 1994. Revised November, 2001.)

REALTOR® A, the listing broker, had shown a house to Buyer B on several occasions. It was an old house in a desirable location in which Buyer B had become interested for extensive modernization. It was listed at ~~$140,000~~ $420,000. Buyer B had offered ~~125,000~~ $375,000, but the owner had held firm to his asking price. While negotiations were at this point, REALTOR® A received a call from the owner saying that because of a sudden death in the family a number of family plans were being rapidly changed, and if a signed offer was presented within 24 hours, the price of ~~$125,000~~ $375,000 would be accepted. REALTOR® A called on Buyer B, obtained a written offer, and closed the transaction.

Buyer B then continued his discussion with REALTOR® A concerning financing for the modernization of the house that he contemplated. In this connection, REALTOR® A advised him that state revenue stamps in the amount of $5.00 per thousand of the price paid for the house would have to be affixed to the deed when it was filed, and suggested that Buyer B spend an extra ~~$75~~ $225 for stamps to give the appearance of a ~~$140,000~~ $420,000 purchase price for the house. This, he pointed out, would be to his advantage in obtaining a liberal mortgage, should it be checked by the financing institution when Buyer B applied for a mortgage loan to finance his modernization program.

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

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

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

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

Additional Points of Interest

1. The 2023 National Association's Mediator/Mediation training is tentatively scheduled for September 6, 7, and 8 in Chicago. Registration details expected to open the first quarter of 2023: https://www.nar.realtor/events/mediator/mediation-training

2. Join Diane Mosley, NAR's Director of Training and Policy Resources, on the last Tuesday of each month for an interactive discussion on a variety of topics from 1 – 2 CT. For more information and to register for 2023 scheduled sessions in January, please go to: https://www.nar.realtor/about-nar/policies/professional-standards-monthly-sessions

3. The Model Citation Policy's Schedule of Fines was amended to include Standard of Practice 1-8 as a finable offense. Also, the Schedule of Fines was amended for Standard of Practice 1-9.

12/17/22, dmn; Revised 1/25dmn; Revised 1/31/23dmn