

"Yikes! That's a Violation?"



Most sales associates don't purposely set out to violate their industry's ethical standards. However, in the real estate industry, without a working knowledge of the Realtors® Code of Ethics it may be easier than you think.

The most innocent of situations might not be so innocent. In your efforts to get the transaction closed, it's vital not to overlook your duties and obligations under the Realtors® Code of Ethics to which the National Association of Realtors requires you to adhere.

Basic courtesy also comes into play in every transaction, and Realtors are expected to cooperate in the best interest of their clients.

But remember, anyone can file an ethics complaint, be it a fellow Realtor or a member of the public. Don't fool yourself into believing that your courtesy and good intentions will carry you through every transaction. Courtesy and good intentions are obviously necessary, but knowing when and how the Code comes into play can keep some of those intentions from turning into learning experiences you wish you'd never had to go through.

The following are some simple, yet common, ethics-laden scenarios that occur in the Realtor community on a daily basis. Indeed, you may recognize yourself in some of them.

Promote the Interest of the Client

While searching the Multiple Listing Service (MLS), Martin discovered a house he thought his buyer might like. He felt the offer of compensation was low, but noted the listing was not marked as involving a variable (or dual) commission. Martin thought a variable commission meant the listing and cooperating brokers would receive different amounts of compensation.

Since this listing was not marked as variable, Martin believed that he and the listing broker would be compensated equally. Martin's buyer entered into a contract for the house, and the parties proceeded to closing.

At closing, Martin reviewed the HUD statement and discovered the listing broker was receiving a much larger commission than he was. Martin felt this was incredibly deceptive. He immediately notified his buyer of the disparity and insisted the closing be postponed until he had researched the commission issue further and/or persuaded the listing broker to instruct the closing agent to disburse equal commissions to the two Realtors.

Why it's a violation: Martin never should have insisted on postponing the closing over his commission concerns. Article 1 of the Code states that "Realtors pledge themselves to protect and promote the interests of their client." Certainly, holding up the closing was neither protecting nor promoting the interests of his client, who just wanted to finish buying the house. Indeed, Martin may even have exposed his buyer to potential legal liability, if the closing were never completed as a result of his actions.

When he became aware of a potential commission problem, Martin should have allowed the closing to proceed as normal, then taken the matter up with the listing broker afterward. If necessary, his broker could have filed for arbitration against the listing broker, had the listing broker withheld commission Martin should have earned.

However, in this situation, not only did Martin incorrectly hold up the closing, but he did it because of his own misunderstanding. Under Article 3, a listing broker must specify whether there is a variable (or dual) commission arrangement. But a variable commission arrangement has nothing to do with a cooperating broker's commission, or with the commission percentage paid to each broker.

Rather, a variable commission arrangement typically works as follows: The seller and listing broker agree on a total commission dollar figure. The listing broker then offers a certain amount of this commission to a cooperating broker who procures a buyer. But the listing broker and seller further agree that if the listing broker him- or herself procures the buyer, the amount of commission due will be reduced, since the listing broker will have personally earned the entire commission.

Thus, the size of Martin's commission compared to the size of the listing broker's commission was irrelevant. If Martin felt the MLS offer of compensation were too low, he could have contacted the listing broker, prior to beginning efforts to procure a buyer, and tried to negotiate a larger amount.

Present a True Picture

Andrew was a new associate and wanted to send out advertisements to get his name into the community. He prepared a postcard showing a number of properties currently listed with various local real estate professionals, with a heading that said, "Look what's for sale in your neighborhood!" Andrew's ad did not mention that his broker did not own any of the listings he featured.

Why it's a violation: Pursuant to Article 12, "Realtors shall be careful at all times to present a true picture in their advertising and representations to the public." Additionally, under Standard of Practice 12-4, "Realtors shall not offer for sale/lease or advertise property without authority."

Since Andrew's broker did not own any of the listings in the advertisement, Andrew should have secured permission from each of the brokers who owned the listings before publishing them in his ad. Moreover, his ad failed to disclose that his firm did not own any of the listings. As a result, a reader could easily have assumed the listings belonged to Andrew's firm, which would be false and misleading advertising and a misrepresentation to the public.

Offers of Compensation

Brianna's buyer asked her to prepare a full-price offer on a home Brianna had showed him. Brianna did not think the offer of compensation on this particular listing was adequate in light of the sale price and her buyer's offer. The contract Brianna prepared to make the offer contained a paragraph instructing the closing agent on how much commission to disburse to the listing and cooperating brokers. Because Brianna thought the MLS offer of compensation was too low for the circumstances, she wrote a larger commission for herself into this paragraph, finished preparing the offer and presented it to the listing broker.

Why it's a violation: The offer of compensation is a listing broker's unconditional promise to pay a certain amount to a cooperating broker who procures a buyer. If a cooperating broker wants to try to increase this amount, he or she may contact the listing broker, prior to beginning efforts to procure a buyer, to see if additional compensation is possible.

However, under Article 16, Standard of Practice 16-16, a Realtor "shall not use the terms of an

offer to purchase/lease to attempt to modify the listing broker's offer of compensation." A Realtor also shall not "make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation."

In most cases, the listing broker, not the seller, is paying a cooperating broker's commission. When a broker and seller enter a listing agreement, they agree on the total commission amount the seller will pay the listing broker. The listing broker then offers a portion of this amount to a cooperating broker, via the MLS.

Accordingly, a cooperating broker can't insist that the listing broker further lower his or her own commission in favor of paying more to the cooperating broker. (Incidentally, had the seller signed the offer without noticing Brianna's increased commission, Brianna would still have been entitled only to the amount of compensation the listing broker offered through the MLS.)

Also, remember that when a Realtor has an interested buyer who wants to make an offer, the Realtor should never do anything that might jeopardize the buyer's ability to purchase the property.

If the seller rejected the offer because of Brianna's increased compensation, this might also be seen as an Article 1 violation, since Brianna allowed her commission concerns to override her buyer's interest in having his offer accepted.

Reducing the Commission

Maria listed the seller's property in her local MLS. Several months passed, with no serious interest in the house. Finally, Realtor Anna presented an offer on behalf of her buyer. The offer was significantly below the seller's asking price. Maria presented the offer to the seller, who accepted it.

However, the seller insisted that since the offered price was lower than his asking price, Maria must lower her commission. Maria agreed to the seller's demand and reduced her commission by a certain percentage. She also lowered the MLS offer of compensation, which Anna expected to earn.

Although she did not consult with Anna, Maria thought that Anna's reduced commission was fair, considering that the buyer did not make a full-price offer and considering that the initial offer of compensation was rather generous.

Why it's a violation: Under Article 3, Maria's ability to unilaterally reduce the offer of compensation ended when Anna presented the offer. After that, Maria needed to ask Anna if she would be willing to lower her commission.

Listing brokers wishing to lower the offer of compensation may do so as long as they have discussed it with their sellers and are able to timely communicate the change to all potential cooperating brokers before anyone produces an offer. Note that timely communication of a change does not mean lowering the offer of compensation right before an offer comes in.

In this case, if Maria insisted on paying Anna a lower commission without Anna's agreement, Anna's broker might wish to file for arbitration and request a hearing panel to order Maria to pay the full commission offered in the MLS at the time Anna presented her buyer's offer.

Listings Belong to the Brokerage

John was an associate working for Broker No. 1. He eventually decided to leave Broker No. 1 and go to work for Broker No. 2. However, one of his sellers, Sally, was still under a valid listing agreement with Broker No. 1 for another few months.

John contacted Sally and advised that he was soon leaving Broker No. 1 and going to work for

Broker No. 2. Sally expressed regret that John would no longer be her sales associate.

Accordingly, John advised her that she could easily cancel her listing agreement with Broker No. 1 and follow him over to Broker No. 2, where she could relist and likely get a better deal.

A few weeks later, John realized he hadn't heard from Sally. He promptly called to find out whether she had canceled with Broker No. 1 and when she planned to relist with him.

Why it's a violation: Remember, under Article 16, a Realtor may not interfere with the exclusive contractual relationship between another Realtor and a client. As Standard of Practice 16-20 notes, this includes Realtors who are about to leave, or have already left, their current firm where the client is under contract.

In this instance, John committed two Article 16 violations, first, by advising Sally to cancel her listing agreement while he still worked for Broker No. 1, and then, by soliciting Sally for business after he had left the firm and was no longer her representative.

Also note that John may have engaged in the unlicensed practice of law, which is an Article 13 violation, when he advised Sally that she could easily cancel her listing agreement.

Moreover, had Sally canceled the listing agreement on John's advice, she could have faced legal liability if the first broker chose to pursue a breach of contract claim. This possibility certainly was not beneficial to Sally.

Accordingly, John might also have been found in violation of Article 1 for failing to protect and promote Sally's interests, even though she would no longer be his client once he had left to work for the other broker.

These are just a few scenarios that violate the Code of Ethics. It's vital to be familiar with the Code, which is updated annually, to ensure you are continually fulfilling your obligations to your buyers and sellers, as well as to your fellow Realtors.

Got a question about the Realtors Code of Ethics? View the [Code of Ethics](#) online.

For questions about the Code, call Kristy Harrington at FAR's Legal Hotline, (407) 438-1409, Monday through Friday from 9 a.m. to 5 p.m. Please have your real estate license number available when you call.

This article was written by Florida Association of Realtors attorney Kristy L. Harrington.