

Ethical Decision Making in Real Estate Transactions

CASE STUDIES
COURSE 18234 | 2 DCE & 1 ECE

Qualifies for NAR Code of Ethics (COE) Requirement For NAR COE Cycle 7 and Includes New Member Orientation

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Article 1 - Case Study 1

The small commercial building is reasonably priced, in good condition, and located on a high-traffic street in a quaint neighborhood of Chicago, so it is no surprise that two offers are made only after a few days on market. John, the listing broker, presents both offers to the seller, Kathy. One of the offers is from a client of John's and the other is an offer from Buyer Broker Bob's client.

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Article 1 - Case Study 1
continued

"These offers are both full price, with no contingencies, and there seems to be no difference between them," says Kathy to John. "Can we make a counter-offer for more money?" she asks. John explains that countering a full-price offer could result in one or both buyers walking away from the table.

"Okay, I'll tell you what," says Kathy, "If you reduce your commission, I'll accept the offer you procured. Although you will earn a little less than we agreed in the listing contract, you'll still get more than you would if you had to pay the other buyer's broker." John agrees.

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Article 1 - Case Study 1
continued

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Buyer Broker Bob learns from his client, who contacted seller Kathy directly to find out why her full-price offer wasn't accepted, that listing broker John had reduced his commission to make the offer that he procured more desirable. Bob is very upset.

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Can John renegotiate his listing commission at the time he presents the two offers?

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No. John is bound to the commission he agreed to in the listing contract.

Yes, John may renegotiate the listing commission, but only before he presents the offers.

Yes, John is permitted to renegotiate the listing commission at any time.

John may only raise the listing commission, not lower it.

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Can Jon renegotiate? By reducing the listing commission, can John present both offers in an objective manner, as required by Standard of Practice 1-6?

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No. John could not possibly be objective when presenting an offer from his own client.

Yes. Standard of Practice 1-6 requires only that offers be presented "quickly".

No. By agreeing to reduce the commission, John indicates that Bob's client's offer is no good.

Yes. John's reduction of the listing commission alone does not mean he cannot be objective in his presentation. Agreeing to reduce the listing commission is simply part of the negotiation process.

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Under Article 3, as established in Standard of Practice 3-4, is John obligated to inform Bob that he modified the listing commission prior to the offer being accepted?

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Yes. By reducing the listing commission for the offer, he procured, John created a "dual commission arrangement", one that must be disclosed.

No. Even though John might have created a "dual commission arrangement", disclosure of such to Bob is not "practical" given the situation.

No. Standard of Practice 3-4 does not require a listing broker to disclose a dual commission arrangement.

No. Reduction of the listing commission during negotiations does not create a dual or variable rate commission arrangement as defined in Standard of Practice 3-4.

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Article 2 –
Case
Study 1

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Dr. Luis, who recently completed his medical residency, decides to return home to the neighborhood where he grew up to open a small medical practice. He enlists the services of REALTOR® Sara to find him a suitable space for his clinic. Sara emails Dr. Luis several properties that fit his requirements. One property is a two-story building listed by REALTOR® Tom that shows in the remarks section, "Rental apartment upstairs."

Dr. Luis calls Sara to tell her that something about Tom's listing seems odd. "That building is in the neighborhood I grew up in," says Dr. Luis, "and I remember there being a problem with the Building Department when the owners added a kitchen to the second floor, so they could live above their business."

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Article 2 –
Case
Study 1
continued

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Sara assures Dr. Luis that she will make the necessary inquiries, then promptly get back to him. A call to the Building Department confirms Dr. Luis' suspicion – that the building is zoned "commercial" and does not provide for a residential apartment."

Feeling embarrassed and misled by an apparent misrepresentation of the property in the MLS, Sara contacts Listing Broker Tom who acknowledges the seller told him the rehab was "up to code," but was completed without the necessary permits. According to Tom, the apartment had never been rented. "I assumed the new owners could get a zoning change or variance from the Building Department," he said.

Sara contemplates filing an ethics complaint against Tom, charging a violation of Article 2 for publishing inaccurate information in the MLS.

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Did Tom violate Article 2?

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No. Once he was contacted by Sara, Tom explains to her exactly why he thinks the future owners might be able to obtain a zoning change or variance from the Building Department.

Yes. Tom misrepresents the property information in the MLS.

No. It is outside Tom's expertise to know whether the property's zoning provides for an apartment.

Maybe, depending on whether the seller told Tom to list the property in the MLS that way.

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Should Tom have identified the building as having a revenue generating apartment?

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Yes. As indicated by the seller, the apartment was built "to code".

No. Tom knew that the building would need to have a zoning change or variance from the Building Department before it could legally be rentable.

Yes. The former owners did write-off the apartment on their taxes.

Yes. Tom made no representation that the apartment was legally built.

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Article 3 Case Study 1

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Lucy is a listing broker who published an offer of cooperation and compensation in MLS for one of her listings, prices of \$100,000. The offer of compensation to MLS participants was for X percent. Sam saw the MLS listing, showed the property and wrote an offer on the property for Barney Buyer. When Sam delivered the offer to Lucy, she said "Oh, by the way, I had to reduce my commission the other day to keep the seller happy. I can only pay Y percent co-op fee now." (Y is 1 percent less than X.)

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What Standard of Practice under Article 3 applies to this case?

- Standard of Practice 3-4 - dual or variable rate commissions.
- Standard of Practice 3-2 - changes in compensation offers.
- Standard of Practice 3-1 - terms of compensation offers.
- Standard of Practice 3-3 - mutually agreed changes in compensation.
- Standard of Practice 3-8 - availability of listed property

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Is Lucy in violation of the Code?

- Yes. She failed to timely communicate the change in cooperative compensation before Sam produced an offer to purchase.
- No. Listing brokers establish the terms and conditions of offers to cooperate and Sam had the obligation to ascertain those terms.
- Yes. It is unethical for Lucy to change the cooperative compensation once it is established.
- No. Whatever the seller dictates to Lucy is what the cooperating broker must accept

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If Sam files an arbitration claim against Lucy for the compensation offered through the MLS, should Sam prevail?

- No. A possible violation of the Code of Ethics is not a determining factor in an arbitration claim.
- No. Lucy is the "master of her offer" and can change it at any time before the closing.
- Yes. An arbitration panel would likely rule in Sam's favor if Sam can prove that he produced an offer that resulted in the sale before Lucy attempted to change her compensation offer.
- No. Lucy is only obligated to split based on what the seller pays, regardless of what was originally published in the MLS.

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Article 3 – Case Study 2

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The offer, contingent on the sale of the buyer's current office building, is accepted by Seller Sam. But Sam instructs Bill, the listing broker, to continue to market the property with the hope that a better offer or one without a contingency would be made.

One week later, Buyer Broker Steve contacts Bill to arrange a showing of the property to an out-of-town client. "I think it's the perfect building and location for my client's business. He'll be here this weekend," says Steve. Bill sets up the showing for the weekend but says nothing about the previously-accepted purchase offer.

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Article 3 – Case Study 2 *continued*

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After seeing the property with his client, Steve drafts a purchase offer and sends it to Bill's office. At Seller Sam's instruction, Bill informs the original buyer of the second offer, and the buyer waives the contingency.

Bill informs Steve that Sam intends to close on a previously-accepted contract now that the "sales contingency" has been removed. Steve is very upset that Bill did not tell him about the previously-accepted offer. Bill says he continued to market the property and did not make other brokers aware it was under contract to promote his client's best interest by continuing to attract buyers.

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Is Bill obligated to disclose the accepted offer to other cooperating brokers?

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Yes. Standard of Practice 3-6 clearly establishes that Bill must disclose accepted offers.

No. It could have affected Bill's ability to obtain future offers.

No, not if the seller instructed Bill to keep it confidential.

No, not if the offer included unresolved contingencies.

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Does Bill's obligation under Article 1 to protect and promote his seller client's interests mean that he should not reveal the accepted offer?

Yes. Bill's obligation to protect and promote the client's interests controls and Bill should not be found in violation of the Code.

Yes. Because Article 1 is a higher priority than Article 3, Article 1 controls.

No. Article 1 also requires that Bill be honest with all parties. This obligation of honesty, along with the requirement of Standard of Practice 3-6, requires Bill to make the disclosure of the accepted offer.

Yes. Article 1 emphasizes fiduciary obligations and overrides any other obligation that potentially conflicts with it.

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Article 11 –
Case Study 1

It was a listing that Leo, a REALTOR®, now wished he had never taken. Keith, Leo's close friend, was selling his home and was adamant about having Leo list the property. Leo appreciated the gesture, but repeatedly told Keith that his experience was in commercial properties and not residential. In addition, Keith's home was in an area of the city that Leo didn't know much about. Leo strongly urged Keith to have the house appraised. Keith insisted he knew the area and that \$166,000 was the home's fair market value. This amount seemed low to Leo, but he listed the house at this price. It quickly sold to a young couple, Linda and Brian.

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Article 11 –
Case Study 1
continued

Five months later Leo received a call from Keith, who was upset. Keith told Leo that he met the buyers, Linda and Brian, at a party and found out the two were moving because Linda had been reassigned to another city by her company. The couple had received an offer on the house for \$190,000, which they declined, feeling they could do better. Keith was upset at Leo for not giving him better advice concerning the \$166,000 sale price.

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In addition to Article 11, which other Article might apply to this case?

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Article 5

Article 10

Article 1

Article 2

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Is Leo in violation of the Code?

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Yes. He failed to do a market analysis when listing the home. In addition, he should have provided Keith an appraisal at his cost.

No. He had no obligation to Keith once Keith insisted on Leo listing the property.

Yes. Even though he told Keith about residential sales being outside his field of expertise, he was also required to "engage the assistance" of a residential real estate broker.

No. He fully disclosed to Keith that he was a commercial broker and that Keith's property was outside his area of expertise. He also recommended that Keith have the property appraised.

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Article 11 – Case Study 2

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Sean considers refinancing a twenty-three-unit apartment building he has owned for several years to unlock some of the equity. The lending firm, ABC Mortgage, orders an appraisal for the property from REALTOR® Paul, who happens to be a licensed appraiser and a commercial real estate broker. The appraisal report is complete with the property address, date prepared, value, purpose, and market data. After receiving the appraisal, Sean is surprised to learn how much the building has appreciated and decides to sell the property instead of refinancing it.

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Article 11 – Case Study 2

continued

Because Sean likes how thorough REALTOR® Paul was with the appraisal process and knowing that he is a commercial broker, Sean hires Paul to represent him as his listing broker. Within one week, an offer is made on the property and accepted.

During the loan application, the prospective purchaser informs the new lender that the property was recently appraised for ABC Mortgage. The lender is surprised to learn that Paul is both the listing broker and the appraiser, and that no disclosure was made about his "contemplated interest" as established in Standard of Practice 11-1.

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As used in Standard of Practice 11-1, does Paul have a "present or contemplated interest" in the property when he does the appraisal?

Yes, as a licensed commercial broker, there always is the chance that Paul could have listed the property in the future.

No. At the time of the appraisal, Sean had no interest in selling the property.

Yes, Paul was paid to conduct the appraisal.

No, ABC Mortgage ordered the appraisal.

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Is Paul in Violation of Article 11?

Yes, Paul should have disclosed in the appraisal that he is a licensed broker.

No, Paul provided all of the appropriate information in his appraisal, and at that time, he had no intention of listing Sean's property.

Yes, Paul is not qualified to conduct the appraisal.

Yes, Paul is not qualified to list the property.

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Case Study – Article 16

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Tony operates a small accounting firm and owns the building that houses his offices. Given the recent growth of his firm, Tony purchased a larger office building and is planning to relocate. He enlisted the services of Sue, a REALTOR®, to sell his current office building and entered into a 90-day exclusive agreement.

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Case Study – Article 16 *continued*

29

Three months later and one week before Tony was to close on the new building, Tony's previous building remained unsold. Sue had shown the property only five times in the three months. "I think I should get another agent," Tony said to Fred, his friend. Fred suggested that Tony talk to Laura, a REALTOR® who had helped Fred sell his office building. Fred told Tony, "I'll give Laura a call, tell her about your situation, and see if she can help."

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Case Study – Article 16 *continued*

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After Laura received Fred's call, she decided to call Sue to ask when her listing agreement with Tony expired. Laura had heard of Sue but had never spoken to her. When Laura finally reached Sue after leaving several messages, Sue was abrupt, refusing to discuss her listing or disclose when it expired. Laura explained that under the circumstances she could go directly to the seller to get the information, thinking this might elicit a response from Sue. Instead, Sue hung up.

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Case Study – Article 16

continued

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Laura then called Tony. He recognized Laura's name from his conversation with Fred and was happy to hear from her. Laura explained her services and indicated she would be happy to list Tony's office building after his exclusive listing agreement with Sue expired.

Two weeks later Sue's listing expired, and Laura listed Tony's property. By the end of the month, it was sold.

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What Standard of Practice under Article 16 applies to this situation?

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Standard of Practice 16-6 (discussions with other's clients).

Standard of Practice 16-4 (soliciting other's clients).

Standard of Practice 16-2 (general mailings).

All the above.

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Is Laura in violation of Article 16?

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Yes, Laura's call to Tony was an unethical solicitation.

No, Article 16 doesn't apply.

No, Laura followed the exact procedure specified by Standard of Practice 16-4.

Yes, Laura was required to get Sue's permission to deal with Sue's client Tony.

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What was Laura's obligation?

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Not to solicit Sue's listing unless Sue refused to tell Laura the nature and expiration date of the listing.

None. Listings are fair game for solicitation at any time.

Not to solicit Sue's listing under any circumstances.

Not to solicit Sue's listing unless Sue's client, Tony, called Laura directly without Laura directly or indirectly initiating the discussion.

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Is Sue in violation of Article 16?

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Yes, Sue is required to give Laura the nature and expiration date of the listing when Laura asks.

No, Sue is not required to give Laura the requested information.

Sue is not in violation of Article 16, but she is in violation of Article 3 by refusing to cooperate with Laura.

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