

## Professional Ethics and the Real Estate Agent

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To most people, the term *ethics* suggests a general sense of honesty. To a professional, the term applies specifically to a standard of appropriate behavior, as prescribed by a professional association's written code of conduct. This article is concerned with ethics in the real estate brokerage business, focusing on the *pros* and *cons*. The "pros," or professionals, are supposed to promote and protect the interests of their clients, but they sometimes "con," exploiting the public trust by taking advantage of people's fears, or their ignorance of the real estate business.

### What Constitutes Unethical Behavior?

Unethical behavior among real estate brokers can take many forms. The broker is a business operator, for example, and can face all the temptations to cut corners (or engage in outright fraud) that all business people confront. I once observed a broker/manager – my own partner – on the phone, cursing loudly at someone who, I felt, must have made him very angry. Yet after hanging up, he cheerfully confided, "I just screwed the phone company out of \$1,000." Needless to say, we were not partners for very long.

Our primary concern in this discussion, of course, is unethical behavior by brokers in transactions, which can harm buyers and sellers of real estate, or other members of the public. Consider the real estate agent who assured a prospective buyer that FHA financing would be available on a particular house, prompting the buyer to sign a purchase offer and give the agent \$1,000 in earnest money. As soon as the check was in his hands, the agent signed the offer, revealing himself to be the owner as well as the listing broker, and binding the client to the purchase provided the client could obtain financing.<sup>1</sup> Somewhat surprised to learn that the agent had been showing his own property, the buyer sought the agent's help in obtaining an FHA loan. He was even more surprised to hear the agent reply, "That's your problem." After learning of this troubling series of events (including the fact that the broker had promptly cashed the \$1,000 check), I

urged the buyer to call an attorney, but he was reluctant to "send good money after bad." So greed had found another mark.<sup>2</sup>

### Taking the Easy Way Out

Some ethics violations go unpunished because of the fear or timidity of other professionals. I recall a case when one of my branch managers mentioned that a broker operating a competing office in the same town had done something wrong. After hearing her story, I had no doubt that our competitor knew that what he was doing was unethical. I explained to my manager that the actions described violated the Realtors® Code of Ethics, and that she should file a complaint with our local Board of Realtors.® But she refused, not wanting to start any "trouble."

Her reaction was not unusual. It is unfortunate that the very thought of putting an accusation in writing, and particularly the thought of attending a hearing and answering questions in front of the accused, frightens otherwise-dedicated people away from taking important ethical stands. We can all understand these fears; I remember one colleague who literally shook and cried at the prospect of being asked to testify before a panel of her peers. But we must also ask: if the "pros" will not help to police their own profession, how can they claim to be ethical – or professional?

Less understandable is the "blissful ignorance" approach taken by some practitioners. Several years ago, a broker stated to me that she did not want to know anything about house construction. That way, she would not have to answer buyers' questions about construction, and risk being wrong. But perhaps even more troubling is the combination of one broker's ignorance with another's greed. A broker had listed a very attractive house with an excellent location, at a price that seemed quite low. Another broker promptly bought the house, and then quickly resold it at a much higher price. This example illustrates two ethical breaches. First, the listing broker should have known, or ascertained, the home's value before undertaking to represent the

seller. (It is unethical for a broker to accept an assignment for which he or she is not qualified.) Second, the broker who bought the property owed a duty, under agency agreements in effect at the time, to protect the interests of the seller.<sup>3</sup> That duty included the obligation to tell the seller what the house was actually worth, even if conveying that information would have harmed that broker's own position.

In another case, a potential buyer spied a yard sign in front of a new listing, and called an agent at a different brokerage firm to arrange for a showing. Unable to find the property in the most recent Multiple Listing Service (MLS) catalog, this agent called the listing broker, who stated that the house was being painted inside and was unavailable for showing. The agent calling on behalf of the potential buyer was skeptical, feeling that the listing broker would have found a way to show the home if a buyer had called *him*. Her fears were confirmed when the property was soon sold to a buyer located by the listing broker – who was able to pocket the whole commission, rather than sharing it with a cooperating broker.

A reasonable question, at this point, might be whether the public should care about professionals' taking advantage of each other. The answer is that they should. In the previous example, it was not simply the competing broker, but also the potential buyer (who was denied the chance to bid on the house) and the seller (whose reduced access to buyers may have resulted in a lower sale price) who were harmed by the listing broker's chicanery. In fact, we can state more generally that fair competition between professionals in the same field benefits everyone. Fair competition occurs when professionals do not conspire together against clients or other members of the public, and when they follow the rules of their business in dealing with one another. In a market characterized by fair competition, the prices of professional services fall to reasonable levels, and innovation improves the business to the public's benefit as new methods emerge for serving client needs.

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### Men (and Women) Behaving Badly

The advantages that professionals can bring to bear against the public include their knowledge, their experience, and their access to information through membership in professional associations. A buyer or seller can be intimidated by someone who carries prepared legal forms, and who can locate, with a few keystrokes on a laptop computer, comprehensive data on listings, recent sales prices, and sources of financing. It is fortunate that most professionals do not try to exploit their advantages, but the few who do can hurt anyone who comes into contact with them.

The problem is that, despite carefully crafted codes of ethics, well-designed training and continuing education programs, and the multitude of hearings by ethics panels, some professionals still knowingly take advantage of the public, and of each other. The reason for this problem is human nature. We all begin life as babies, and some professionals never grow much beyond that stage; they cry when they are hungry, and are content only when everything goes their way. People who do not adopt the adult trait of putting others' needs before their own will find it difficult to behave in a professional manner. Their ethical problems will be as predictable as the tides, and as severe as tidal waves.

Some "professionals" take advantage of their business partners, or even their own *families*, to advance their immediate financial interests. It is sad that many real estate brokers proclaim their "professionalism" without the least realization that they must develop the habit of placing buyers' and sellers' interests ahead of their own before they can be professional in any meaningful sense of the word.

### "Everybody Does It"

Ethical problems arise, in other words, when people with professional duties do not accept the attendant responsibilities. Colleagues say, "Eat or be eaten," and we resolve to eat. We read the popular book *Swim With the Sharks*, and come to think that we must be predatory to succeed. "Everybody does it," we are told, and we fear that we will not "fit in" if we do not follow suit. Real estate brokers and other professionals must be forever on their

mental toes, and must show unusual character, to resist this ubiquitous social pressure. The remarkable human ability to adapt does not stop with our physical environment; we have an uncanny ability to adapt to ideas, good and bad, as well.

And bad ideas seem to have become pervasive in our culture. A colleague recently quipped, "It's easier to get forgiveness than it is to get permission." Sadly, what he said is often right. Don't ask, just do it; you may get away with it. Yet earlier in life, we had been told, "Work hard, keep your nose clean, and you'll get ahead." That generally sound advice leaves some trusting souls as easy marks for predators. Our childhood mentors should also have told us to "watch out for the guy hiding in the bushes."

*Ethics panels should be sent from other Boards of Realtors® so that the panelists will not know the complainants or respondents, and will not be influenced by experiences with either party or concerns over reactions to the outcome.*

Of course, as children we are also told to "stop complaining." While this advice is *sometimes* sound (no one wants to hear incessant hollering), we are left with the impression that it is *always* wrong to speak out. In a similar vein, parents tell their offspring that it is "not nice to tattle;" less genteel popular culture tells the young person forming impressions that he or she should not be a "squealer," "stool pigeon," or "rat-fink." By extension, if someone takes advantage of you, you are supposed to be a "good sport" (*i.e.*, a cheerful loser). If you complain, even with good reason, you open yourself to charges of being a "cry baby."

Another bad idea – we must note with some irony – is that "most people are basically good." This seemingly uplifting idea provides a false sense of comfort to many; if most people are good, it is unlikely that anyone will take advantage of us. Indeed, our ingrained feelings that people are basically good, and that we should stoically endure life's tribulations, make it very hard for any of us to file formal complaints when we really do suffer harm at the hands of people who have really meant to hurt us.

But we must overcome these childlike feelings if we are ever to assume mature roles in maintaining a system of professional ethics. Having suffered many of life's inevitable injuries (as have most individuals with some gray around the temples), I have come reluctantly to the conclusion that some people are just plain bad. They do not even want to change; they like what they are doing, and feel that anyone who does not take advantage of others is just plain stupid.

### Building on Trust

Business must be built on trust. If you distrust the salesperson, you will leave the showroom. If you doubt the integrity of the product, you will not make a purchase. If you suspect that someone

is handing you a check that will bounce, or cash that is counterfeit, you will not sell to that individual. We need some level of trust if the economy is to function. But this trust, and our willingness to sometimes offer it without even thinking, is what the miscreants count on.

How can we change them? We may not be able to change their *thinking*, but there are some practical methods for improving their *behavior* – and the ethical environment – markedly. Practitioners who join professional organizations, such as the National Association of Realtors® (NAR),<sup>4</sup> American Bar Association (ABA), American Medical Association (AMA), American Architectural Association (AAA), and others agree to be bound by the organizations' codes of ethics. It is a violation of the ethics standards of each aforementioned association for any member to take advantage of a client, competitor, or other party encountered in the course of conducting business.

Yet even an ideal code of ethics, conscientiously applied, can break down under the weight of human nature. While I was teaching ethics to new members of my local Board of Realtors,<sup>®</sup> a student

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asked, "Why do we have to go through all this; isn't it enough to follow the Golden Rule?" The answer is no; without orientation, supported by explanations from those familiar with ethical dilemmas that arise in the business, new practitioners are very susceptible to making honest mistakes. Lacking exposure to the transaction process, the new licensee may not yet see how a particular action or statement might violate even the Golden Rule. Just as importantly, these orientations demonstrate to new members of the profession that senior members expect ethical behavior from them.

Newcomers to the field may not be the only ones who have to be reminded of our need to stress the ethical foundations on which the real estate business rests. A fellow panelist in an ethics orientation once said, "I don't see why we have to teach this stuff. You've either got it or you haven't." As one who had always felt it essential for established brokers to explain the intricacies of responsible professional behavior to newcomers, and abhorring the idea that there might be no hope for some who just "haven't got it," I was troubled by her remark.

After long reflection on that incident, however, I came to believe we were both right. New members do require orientation, because ethics is not a simple topic. Most new Realtors® sincerely want to behave ethically, and any mistakes they make reflect their lack of understanding of the Code's applications in the range of situations to which they are exposed. The needed understanding comes with experience, but only if the member remains aware of the imperative for ethical conduct. It is sad that this imperative can be overshadowed, in the minds of some practitioners who would like to be honest, by the more immediately felt need to compete "successfully" (as measured in monetary terms). At the same time, dishonesty is, for some, a way of life, and on them our breath is surely wasted.

We all like to think that our actions reflect our having thought things through and made the most intelligent choices. But they do not. In reality, our emotions generally determine *what we want* to do. We then use our intellects to figure out *how* to do what we want to do. The teaching of ethics, therefore (despite most

Boards' inefficient approach), is not the problem. Those who habitually violate the Code know what they are doing, and no amount of training will change them. The problem is not one involving the mind's ability to absorb, but one involving some minds' unwillingness to follow the Code when doing so conflicts with their own immediate self-interest.

### The Heart of the Matter

The real problems we face in furthering ethical behavior can be summarized as:

1. *Many offenses go unreported.* The public is not aware of the Realtors® Code of Ethics, or of how to report violations. Even many Realtors® may not know whether specific behavior is an ethical violation, or how the reporting process

dollars earned through a questionable action to exceed the penalty paid. It is difficult to curtail unethical behavior while it is profitable.

4. *Some offenders know the problems discussed above, and count on benefiting from their continued existence.*

If a code of ethics is not enforced, no one will waste time learning it, or forego profitable opportunities obeying it. Our response must be to remove the profit from the sin, making sure, in every way possible, that unethical behavior is unprofitable behavior. Some methods that would improve the professional image of real estate practitioners in the eyes of their clients, peers, regulators, and the public would be as follows:

*Printing our Code of Ethics in the newspaper, together with an explanation of the complaint process, would do more to enhance the image of Realtors® as genuine professionals than could any public relations campaign at many times the cost.*

works, and they may be unwilling to spend time in such unpaid activities as reporting and testifying; time is money. Salespersons assume that their brokers should follow through on any ethical questions that arise. Brokers and salespersons alike may fear the hearing panel environment, or fear that violators and their supporters will punish "squealers" by refusing to show their listings.

2. *Realtors® sitting on hearing panels may rationalize.* The accused may be a friend, and certainly is a colleague; why should I hurt her? Or think of the other side of the coin: he skinned me once, and now I can get even. Reasons for rationalizing comprise an endless list: there is no ironclad proof of guilt; forgive and forget; it's the public against us; there but for the grace of God go I.

3. *Penalties often are not sufficiently severe.* The typical finding of guilt in an ethics hearing results in only a reprimand. Even when a financial penalty is levied by the ethics panel and affirmed by the Board's directors, the offender typically can view it as a cost of doing business expediently; it is not unusual for the

1. *Training: Pay the best teacher in the Board to conduct ethics training for as many years as he or she is willing.* This instructor should administer a written test after presenting the subject material. The exam should be subjective (no true/false or multiple choice questions), requiring students to respond with explanations exactly as they would to the public. Only in this way can the teacher be sure that the student truly understands the issues. Ongoing ethics education for all Board members would include the development of new ethics-based skits to be performed at each Board meeting. Participation in this exercise should be a duty of every member of the profession, with compliance monitored monthly by state associations and reported annually to NAR as a condition of the local Board's retaining its charter. Skits of this type typically are fun as well as educational; in my experience, they can be a source of unbridled hilarity when performed at meetings.

2. *Hearings: Select members for hearing panels not to train them in the finer points of ethics, but rather because of their experience and demonstrated*

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*judgment.* Our Realtor® tradition of involving new people in leadership roles should not extend to ethics panels; both the Board and the public benefit from more consistent enforcement and the higher standards of professional conduct that result from experienced ethics panelists. Hearing ethics cases is not a right of membership; it is a duty for those who are qualified. No member who has been found in violation of the Code of Ethics more than once should ever serve on a professional standards hearing panel. Further, no panel should hear cases involving members of its own Board. Panels should be sent from other Boards of Realtors® so that, we might hope, the panelists will not know the complainants or respondents, and will not be influenced by experiences with either party or concerns over either's reaction to the ruling.

3. *Finding and Sentence: Each ethics panel's rulings should be published in its Board's periodic newsletter.* This public reprobation would be a powerful deterrent to unethical behavior and, despite anything a lawyer for the party charged might claim, would no more be a violation of the adjudged's right to privacy than we find in the public record following criminal cases. The reporting of one's ethical violations should be understood as a condition of a career as a Realtor.®

### Getting the Public Involved

But the most important action we can take may be to involve the public in the ethics process. Attention to ethics is not a problem only for the individual practitioner or the professional association. Ethics problems bear most heavily on buyers and sellers, who suffer aggravation, lost time, and lost money. Most people do not know how to seek redress, and a large part of the public feels that no one in the industry or the regulatory community cares. This view is justified; no one has demonstrated that they *do*, in fact, care. Our industry therefore must *encourage* members of the public to complain when they feel that they have suffered as a result of real estate agents' actions.

The complainant should be informed, in writing, of the three possible forms of redress: a formal complaint to the professional association (which, in turn, has the responsibility to assist the complainant),

a written complaint to the state licensing agency, or legal action against the offender. Disclosure of these options should be mandatory, and a written record of each inquiry should be maintained on file, available for inspection by licensing authorities at the same time they inspect the adequacy of the local real estate companies' earnest money deposit records.

A complainant also needs help from the association's grievance committee in evaluating *whether* a specific allegation, *if* true, would constitute an ethics violation. (Finding whether the allegation is true is the province of the hearing panel.) In addition, every article and standard of practice in the Realtors® Code of Ethics should be published, one per week, in the real estate section of the local newspaper, together with the telephone number of the person to whom readers should pose questions regarding the filing of complaints. The Board secretary or executive officer answering such questions should not express an opinion on whether the act complained of is a violation, but should respond only with instructions for filing.

This public notice of our likely list of sins, together with the widely understood offer of an open channel for complaints, would do more to enhance the image of Realtors® as genuine professionals than could any public relations campaign at many times the cost. It is unfortunate that many among our ranks think "ethics don't put bread on the table." The fact is that ethics *do* put bread on the table, as improved reputations improve our business. Ethics also save "bread" spent on attorneys, and time spent in defense.

For many years I wrote a real estate "Tip of the Week" and published it, at my own expense, in the newspaper. One such tip advised readers that they could complain of an agent's actions by contacting our Board of Realtors,® the state's licensing authority, or their own lawyers. The reaction of many Realtors® in our area was swift, negative, and predictable: why was I encouraging people to "make trouble" for my colleagues? Professionals and their associations must abandon the old attitude that the consuming public is the enemy, and must work hard to gain the public's trust.

The easy approach, of course, would be for us to do nothing about those

"professionals" who continue to do damage, instead continuing with our sorrowful, hand-wringing attitude that things have always been this way and that we can not change human nature. But I am not suggesting that we try to change human nature. I am suggesting that we use it in solving the problem.

The effective course is difficult, but worth pursuing. Instead of continuing to let renegade members falsely imply their adherence to ethical standards by hiding behind the Realtor® emblem, let us travel the high road to effective management of our associations. As stated on a plaque in my high school dean's office, "The path of least resistance makes men and rivers crooked." Ethics is *everybody's* business, and just grumbling does not help. Unless professionals, and the public alike, formally complain about what they think are intentional violations, and question practitioners when they think ethical mistakes have been made, we shall deserve to live in an ethical wasteland. ■

### Notes

1. Absent a contingency specifying financing type, the client's only escape route would have been the inability to obtain any reasonable financing terms, rather than the mere inability to get an FHA loan.
2. The federal government can be as greedy as an unethical broker. The typical buyer who plans to borrow the money to pay for a house makes a purchase offer with a financing contingency; if financing is not available, then the earnest money is returned. However, if someone makes an offer to purchase a house that has been repossessed by the Department of Housing and Urban Development (HUD), but is then unable to buy the property because of an inability to secure financing, HUD keeps the deposit. And there is no recourse.
3. Under traditional Multiple Listing Service (MLS) arrangements, every participating broker was an agent of all sellers of listed properties within the jurisdiction of the local Board of Realtors.® The situation today is more complex, because of the emergence in recent years of buyer's brokerage.
4. *Realtor*® is a registered trademark, not a generic term like *doctor* or *lawyer*. It means, literally, a real estate licensee who has joined the National Association of Realtors® (NAR) and has agreed to abide by the Association's Code of Ethics. While most active real estate brokers and salespeople are Realtors,® not all are. Only a NAR member should be referred to as a *Realtor*® (written references should always be capitalized and include the trademark sign), and no one should ever be referred to as a *real-i-tor*.

*Mr. Hunter, a Champaign resident, was a US Army officer for 13 years and a Realtor® for 32 years. He has served on, and chaired, local and state grievance and ethics committees, and has taught Realtor® ethics classes for many years.*