



Official Handout

Michigan REALTORS® Advanced Ethics

1. You are the broker for a company located in one of the four corners of Michigan. You belong to a fairly large, regional MLS. Among other things, your brokerage sells second homes. However, lately you have had this situation, several times: One of your agents receives a call from a buyer, meets with them, gives them disclosures, asks if the buyer is working with another agent, and is told no; the agent spends hours with the buyers, shows the property, answers questions, and then within a few days the listing agent receives a sales contract sent to him, and your company, by a REALTOR® from 3 to 4 hours away, stating that they represent the buyer. Sometimes the other REALTOR® is not even a member of your MLS. What problems are there with this? Reverse the situation: if one of your agents was doing this, would you consider it to be ethical? Is there an issue with Article 1? What about Article 3?
2. You have buyers interested in a listing, which you show them. While doing the MLS search, you see by the history that the property was marked pending two times, but both times it came back on the market. You ask the listing agent what went wrong with the two previous contracts, and she evasively says 'I really don't know'. You know one of the agents who previously had it pending, so you ask her. She says: "Oh, the home inspection revealed some major flaws! For one thing, the foundation is very unstable. The listing agent knows that; we sent the report to her." The Seller's Property Disclosure has not been updated. What issues are raised here, and how should you proceed? If you were going to file an ethics complaint, which articles would you cite, and why?
3. You arrive to show a property, with a scheduled appointment, using a combination lockbox. As you start to open the door, two people come out. You introduce yourself, and they introduce themselves as well, as "Joe and Mary Smith". You ask: "Oh, which of you is the REALTOR®?" The reply is: "Oh, neither of us, our agent was just very busy and gave us the combo so we could go in and look around. She knows us, and knows we are okay." Would you/should you tell the listing agent? What articles of the Code come to mind? If you were the listing agent, would you first call the broker for the agent who gave out the combination? What if that person *is* the broker?
4. REALTOR® Suzie is very active in social media and has friends on Facebook who are also in the real estate business. Additionally, she follows several other local REALTORS® on their business (fan) pages.

Suzie decides that in order to get more business, she will repost other REALTOR®'s posts about houses. A home owner listed with REALTOR® Ben sees his house on Suzie's Facebook page, and is very irate, and calls REALTOR® Ben to complain. REALTOR® Suzie responds by saying "What is your problem? I am promoting your property, and it shows up as being listed by your company!" What is the issue? Who needs to give permission? Would you file an ethics complaint, or try to talk this over with Suzie and her broker?

8. REALTOR® Todd is an appraiser, and REALTOR® Elaine considers Todd to be a 'deal killer', because on one sale, he came in lower than the negotiated price, and the sale fell apart. Elaine is very vocal about her opinion of Todd, and posts on her social media sites, naming him by name, using images of a professional wrestler, with Todd's head superimposed on the body, and calling Todd "The Deal Killer". Can she do this? Can Todd file an ethics complaint? Should someone first speak to REALTOR® Elaine's broker?

Ethical Dilemmas: All of the following scenarios are based on interpretations of the REALTOR® Code of Ethics, as found in the Code of Ethics and Arbitration Manual. Refer to your copy of the Code of Ethics, and answer the following questions: Which Article was cited?

1. Sam Seller gave an exclusive listing on a house to Realtor® Lorelei, stating that he thought \$132,500 would be a fair price for the property. Realtor® Lorelei agreed and the house was listed at that price in a 90-day listing contract. Realtor® Lorelei 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 her office, Lorelei discussed the listing, noted that it appeared to be overpriced, 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® Lorelei, Sam called Realtor® Lorelei'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® Lorelei's associates was: "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."

Sam contacts the REALTOR® Association, and is referred to you as an ombudsman. What article would you cite? Is there a word or words in that article you would focus on?

Grievance Committee: If you are the Grievance Committee, would you send this forward? Would you add or delete articles?

2. Client A listed a small house with REALTOR® Ralph, who obtained an offer to buy it and a deposit in the form of a check for \$2000. Client A accepted the offer, but then heard nothing from REALTOR® Ralph for three weeks. When the client finally reached REALTOR® Ralph, he said "Oh that sale fell apart. The check was returned marked "Insufficient Funds". Client A contacts your local association. You are assigned as an ombudsman to Client A. One of the things Client A asks you is when REALTOR® Ralph

should have, legally and ethically, deposited the check, and when he should have notified you that the sale had fallen apart. What would you suggest as Articles, if Client A wishes to file an ethics complaint?

Grievance Committee: Assume this complaint comes to you, and Client A has cited Article 1, Article 3, Article 8, and Article 11. Would you send this forward as is? Would you amend it at all?

3. REALTOR® Heather listed a property and put it into MLS. REALTOR® Len showed the property and wrote an offer. At the same time, REALTOR® Heather wrote her own offer. Heather made an appointment with the sellers to present both offers. The buyer working with REALTOR® Len was very upset, and contacted the seller directly, asking why his full price offer was not accepted. The seller told the buyer that REALTOR® Heather had said that she didn't know if REALTOR® Len's buyer was qualified, but she knew her buyer was, and that was why he had accepted the other offer. The buyer shared with REALTOR® Len what the seller had said, and REALTOR® Len filed an ethics complaint. He cited Articles 1 and 15.

Grievance Committee: Would you send this forward as is? Would you amend it at all?

4. REALTOR® Richard operated both a brokerage company and a home building company. He had two sales forces; one for his brokerage, and one for his new homes, and he consistently did not put the new homes into the MLS, nor did he agree to cooperation and compensation on those properties when other REALTORS® requested both cooperation and compensation. REALTOR® Betty filed an ethics complaint against REALTOR® Richard for failure to cooperate. Which Article applies?

Grievance Committee: Assume Betty filed an ethics complaint, citing Articles 1, 3, 4, 5, 15, 16. Would you amend this as is, or send it forward?

5. Buyer Bill noted REALTOR® Sheila's ad describing a listing with five acres as: "about 20 minutes from the city, a modern 3 bedroom home, well maintained, and set in a charmingly landscaped site." The ad appeared both in print and online. Buyer Bill made an appointment to see it, and shortly thereafter filed a complaint with the local Association of REALTORS®, complaining of 'gross exaggeration' in the ad and stating that his entire afternoon, going to see the property had been a 'complete waste of time'. Buyer Bill produced evidence that the property was in fact, 36 miles from the city; over 40 years old, with crumbling plaster, dirty paint, broken windows, missing rear steps, and was located at the end of a dirt lane in a small cleared area which was overgrown with weeds. Which Article(s) would apply?

Grievance Committee: Assume that Buyer Bill filed a complaint citing Articles 1, 2, and 12. Would you send this forward or amend it?

6. REALTOR® Carl listed a property and Buyer Beth made an offer; the seller counter offered, and an agreement was reached. Beth made a substantial deposit. REALTOR® Carl posted a "sold" sign on the house. Subsequently, Buyer Beth received notice that she was being relocated by her employer. The buyer and seller reached an amicable agreement to terminate the sale. Shortly after that, Buyer Diane was out looking at houses with REALTOR® Mary. As they passed the house in question, Diane commented: "I don't understand why there is a "sold" sign on that house; REALTOR® Carl showed it to

me yesterday.” REALTOR® Mary filed an ethics complaint, stating that a sold sign constitutes an advertisement, and that this was misleading. REALTOR® Mary cited Articles 1, 3, 12, and 16.

Grievance Committee: Would you send this forward as is, or would you amend it?

7. REALTOR® Peter has an associate broker’s license, and was affiliated with XYZ Real Estate. REALTOR® Peter has his own website, and under the banner on the site, he posted pictures and addresses of properties labeled as “Properties I have sold”. In all cases, he had participated in the sale as either the listing or selling agent. REALTOR® Peter decided to change companies, and went with ABC Realty. He changed his website to reflect his new company affiliation, but left the “Properties I have sold” data in place. He thought his departure from XYZ had been amicable, but REALTOR® Fred, the principal broker of XYZ Real Estate, filed an ethics complaint against him, saying that he violated Article 12, specifically, Article 12-7 which states, in part: “Only REALTORS® who participated in the transaction as a listing broker or cooperating broker may claim to have ‘sold’ the property.”

Grievance Committee: Would you send this forward? Would you amend it?

8. Harry Homeowner contacted REALTOR® Cindy and said “We’ve outgrown our house and we are ready to list it.” REALTOR® Cindy said: “Actually, my business, Buyers Only, means that I only represent buyers; I don’t take listings.” “In that case,” said Harry Homeowner, “what about REALTOR® Stan?” Cindy replied: “I don’t know if I would do that. While he does represent sellers, he doesn’t cooperate with buyer brokers, and as a result, sellers don’t get adequate market exposure for their properties.” Harry shared Cindy’s comments with his wife, Louise, who happened to be good friends with REALTOR® Stan’s wife. She shared REALTOR® Cindy’s comments. Shortly thereafter, REALTOR® Stan filed an ethics complaint against REALTOR® Cindy, citing Articles 3 and 15 of the COE.

Grievance Committee: Would you send this forward? Would you amend it?

9. REALTOR® Linda listed a house and subsequently held an Open House. Buyer Dennis came to the Open House; REALTOR® Linda asked her if he was working with another broker. Buyer Dennis said that he was in fact, exclusively represented by REALTOR® Gary, but that he was very familiar with the property because his close personal friend had previously owned the house. REALTOR® Linda stated that she exclusively represented the seller, but she would be glad to answer any of his questions. After viewing the house, Dennis indicated he was seriously interested in the property and intended to discuss a possible purchase offer with REALTOR® Gary. “I can’t tell you what to do, but if it were met, I would make an offer today,” REALTOR® Linda told Dennis. “You can go back and discuss this with your buyer broker if you like, or I can help you write a purchase contract. It’s your choice.” Buyer Dennis decided to make an offer, and asked REALTOR® Linda to assist him by filling out the contract, which was accepted by the seller later that day.

Subsequently, REALTOR® Gary filed an ethics complaint against REALTOR® Linda, citing her with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR®.

Grievance Committee: Would you send this forward? Would you amend it?

10. REALTOR® Tony put a listing in the MLS, offering compensation to sub-agents and transaction licensees, but not to buyer agents. REALTOR® Maria called REALTOR® Tony, identified herself as a buyer’s agent, and asked to show the property. The following day, REALTOR® Maria presented REALTOR® Tony with an offer to purchase that was contingent on the seller’s agreement to pay, on behalf of the buyer, to pay REALTOR® Maria’s commission. The seller accepted the offer and the sale closed shortly thereafter.

REALTOR® Tony then filed a complaint against REALTOR® Maria citing Article 16 of the COE as interpreted by Standard of Practice 16-16. He stated that REALTOR® Maria had interfered in his relationship with the seller by attempting to negotiate a separate commission agreement with the seller.

Grievance Committee: Would you send this forward? Would you amend it?

11. REALTOR® Tom had an exclusive listing on Seller Sarah’s property and extended cooperation to the REALTORS® in his MLS. REALTOR® Joan showed the property, and wrote an offer. REALTOR® Tom invited REALTOR® Joan to be present when the offer was presented to Seller Sarah. The offer was presented, and negotiations were started, but not concluded. The next day, REALTOR® Joan called on Seller Sarah alone, and recommended that she accept the offer, which was less than listed price; Seller Sarah agreed, and the contract was signed and the sale was made. These facts were detailed in a complaint by REALTOR® Tom, charging REALTOR® Joan with unethical conduct and violation of Article 16, having made her second contact with Seller Sarah without his consent or knowledge.

Grievance Committee: Would you send this forward? Would you amend it?

12. Professor Young, a well-known researcher and college professor, was planning to retire and planned to sell his home near the campus and retire to a rural area. Professor Young made appointments with several brokers, in order to interview them about selling his house, including REALTOR® Pamela and REALTOR® Quinn. During each appointment, Professor Young asked extensive questions hoping to get a clear idea of his property’s market value and each broker’s proposed marketing strategies. REALTOR® Quinn was familiar with Professor Young’s house; she had grown up in the neighborhood, and attended school with his children. The appointment went well and she was confident she would get the listing. To her surprise, just three days later the property showed up in MLS as a new listing of REALTOR® Pamela’s. REALTOR® Quinn was very surprised and hurt; she thought of calling Professor Young to see what she had done—or failed to do—that she didn’t get the listing. In the end, she did not call him.

Several weeks later, Professor Young’s family hosted a retirement party for him, to which REALTOR® Quinn was invited. At the party, Professor Young approached REALTOR® Quinn, and after making small talk, commented: “You’re probably wondering why I didn’t list my home with you.” “I did wonder” admitted REALTOR® Quinn, “but you made a good choice with REALTOR® Pamela; I’m sure she’ll do a

fine job and get a fair price for you.” Then, since Professor Young had raised the issue, REALTOR® Quinn asked “Why didn’t you give me the listing?” Professor Young explained that while he thought highly of Quinn, he was impressed with Pamela’s marketing strategies; his choice had been a business decision and not one influenced by friendships. The conversation moved on to other topics. A month later, REALTOR® Quinn was surprised to receive notice that REALTOR® Pamela had filed an ethics complaint against her, citing Article 16.

Grievance Committee: Would you send this forward? Would you amend it?

Hearing Panels: We are now going to take these same case studies, and change your role. You are now the hearing panel for each one. You have to reach a decision. If there is more than one Article cited, you must indicate how you find for each Article. Because this is Ethics, there can be a minority opinion. You must decide what goes into the Findings of Fact for the Board of Directors to review.

Sam the Seller Your panel gets the first case study, where Sam Seller met with an ombudsman and filed an ethics complaint, citing Article 1, specifically a lack of fidelity to the seller as in “REALTORS® pledge themselves to protect and promote the interests of their client.” Sam also cited Lorelei’s failure to advise the client of her judgment that the price agreed upon in the listing contract was excessive, and by Lorelei’s failure to actively seek a buyer.

In a hearing on the complaint before a Hearing Panel of the Board’s Professional Standards Committee, Lorelei’s response was that Sam had emphatically insisted that he wanted \$132,500 for the property; that by advertising and showing the property she had made a diligent effort to attract a buyer at that price; that in receiving almost no response to this effort she 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, she felt it would be useless to attempt to get Sam’s agreement to lower the listed price; and that she had instructed his staff not to actively market the property at that price.

If you were the Hearing Panel, how would you rule?

Realtor Ralph As an ombudsman, you suggest to Client A. that Article 1 and Article 11 can both be cited, specifically SOP 11-4, because your state requires that the broker deposit an escrow check by the close of business of the second day following receipt of the check.

At a subsequent hearing, it was discovered that REALTOR® Ralph had not deposited the check for ten days after receiving it. **What issues are raised, both legal and ethical? How would you rule, as a Hearing Panel, on Articles 1 and 11?**

Realtor® Heather

The complaint from REALTOR® Len cited Article 1 and Article 15.

At the hearing, upon cross examination, REALTOR® Heather admitted that the sellers noted that both offers were for full price and there seemed to be little different between them and that she had responded by saying: “I’m not telling you what to do, but you might consider that I have carefully pre-qualified my buyer. There’s no question but that she’ll get the mortgage she’ll need to buy your house. Frankly, I don’t know what, if anything, REALTOR® Len has done to pre-qualify his client. I hope he’ll be able to get a mortgage, but you can never tell.” REALTOR® Heather added: “Things can get complicated when buyer representation gets involved. They make all sorts of demands for their clients and closings can be delayed. You don’t want that, do you? Things are almost always simpler when I sell my own listings” Heather added. The seller agreed and accepted REALTOR® Heather’s offer. At the hearing REALTOR® Len asked Heather if she had any proof that he had not pre-qualified his buyer, and she admitted she did not. REALTOR® Len also produced a pre-approval letter for his buyer, and stated that he would have willingly provided it. REALTOR® Len also stated: “REALTOR® Heather disparaged me and my professional reputation just to get both sides of a sale. She not only did a disservice to my buyer, in my opinion, she did a disservice to her seller. She could have asked me for a pre-approval, and she could have asked for both buyers to reconsider their offers and make their ‘highest and best’.

As a Hearing Panel, what do you think?

REALTOR® Richard As you recall, REALTOR® Richard is both a broker and a home builder, and he operates those two businesses separately from each other. He maintains two sales forces, and has consistently not offered cooperation and compensation for his new homes. At the hearing, REALTOR® Betty’s position was: “This is patently unfair! Everyone in town knows that Best Builders and Richard’s Real Estate are owned by the same individual. REALTOR® Richard is freezing us out of commissions on those high priced new houses he builds. He’s only willing to share the crumbs with us—the houses he lists which belong to the people buying new houses. And, because those people buying from him have a house to sell, he gets those listings. It’s not fair!”

REALTOR® Richard’s response was that Article 3 requires cooperation with other brokers “except when cooperation is not in the client’s best interest”. He said: “There is no client, I own the properties. I know them better than anyone, as do my trained agents who sell *only* my new homes. I have never extended cooperation on these houses because other agents who have not been trained by me do not understand new construction, option packages, etc. If there is any ‘client’, it is me, and I have not been harmed.”

As a Hearing Panel, how would you rule?

REALTOR® Sheila

This is case where the buyer stated that the advertising was misrepresentation, and cited Article 12. At the hearing, REALTOR® Sheila was asked to respond to the charge of misleading advertising.

She defended herself by noting that the price was very reasonable at only \$65,000; that at that price it was a great buy for a home on acreage and that all advertising included some “puffing”.

How would you rule as a hearing panel? Is there a possible violation of License Law as well?

REALTOR® Carl (the sold sign)

If you recall, this is the property which had a sold sign on it, which had been put up when the property was actually under contract, and the sale later fell through. REALTOR® Mary's contention is that a "Sold" sign on a property which is put up prior to settlement and actual transfer of ownership is misleading advertising. REALTOR® Carl contended that after acceptance of a bona fide offer, he could consider that he had brought about a sale, and was able to advertise it. One of the hearing panel members asked REALTOR® Carl why the "sold" sign remained on the property after it had clearly fallen through, to which REALTOR® Carl shrugged and said: "I got busy, I guess."

How would you rule as a Hearing Panel?

REALTOR® Peter, (website advertising, properties I have sold). At the hearing, REALTOR® Fred's contention was that XYZ Real Estate was the broker for those transactions, not REALTOR® Peter, or his new company, ABC, and that the advertising would cause consumers to believe that ABC was involved in all those transactions. REALTOR® Peter defended himself by pointing out that he personally had been involved in all of the transactions, and that at the bottom of the list, he had the following disclaimer: "Each of these properties was listed or sold by REALTOR® Peter over the past seven years. For much of that time, I was affiliated with another firm." Under questioning, REALTOR® Peter admitted that he did not name 'the other firm'. REALTOR® Fred reiterated that the ad implied that the sales had been made by ABC Company. **You are the Hearing Panel—how do you rule?**

REALTOR® Cindy (who does not recommend REALTOR® Stan)

At the hearing, REALTOR® Stan state: "I have no idea what REALTOR® Cindy was thinking when she said those things to Harry. I always cooperate with other REALTORS®." REALTOR® Cindy replied: "That's not so. Last year you had a listing in the MLS with no buyer compensation; and when I called to make an appointment to show the property to a buyer, and to get compensation, you refused." REALTOR® Stan replied: "My seller directed me to not offer compensation to buyer agents; my seller's position was that buyer agents could show his house, but they should be compensated by their own clients. I didn't refuse to cooperate; in fact I cooperated with you and you sold that property."

REALTOR® Cindy acknowledged that she had sold the listing, and when asked by panel members, admitted that she had no personal knowledge of any instance where REALTOR® Stan had refused to cooperate with other REALTORS(r). She assumed that REALTOR® Stan's refusal to pay compensation was representative of a general practice on the part of REALTOR® Stan.

If you were the hearing panel, how would you rule?

REALTOR® Linda (write the contract with me):

At the hearing, REALTOR® Linda defended her actions by noting that she had told Dennis she was the seller's exclusive agent and as such, would not, and could not represent Dennis' interests. She pointed out that Dennis had asked for help in writing a purchase offer, and had not sought either legal counsel or the assistance of REALTOR® Gary. She concluded her defense noting that Standard of Practice 16-13

authorizes dealings with the client of another broker when those dealings are initiated by the client. REALTOR® Gary's response was: "Look, she essentially scared my client into thinking he would lose the house if he didn't buy it from her!" REALTOR® Linda responded by saying: "That's not true! Your client told me he was going out of town, that he wanted to write a contract, he knew I was not representing him, and furthermore, when I asked him if he wanted you to draw the contract he said "No, Gary hasn't done anything much for me, just shown me a couple of houses." So, I drew the contract, since the buyer initiated the discussion.

As a Hearing Panel, how do you rule?

REALTOR® Tony (buyer agent asked for compensation): REALTOR® Tony's position was that he was following his client's instructions to not offer compensation to a buyer agent. "My seller felt that a buyer should pay his own agent, so it was listed that way in the MLS. My seller was a little mad that REALTOR® Maria asked him for her compensation, but it was a good contract, so he took it. REALTOR® Maria responded that since the request that the seller pay her commission was made by her client, the buyer, directly of the seller, and not of the listing broker, no violation of the COE had occurred. **If you were the Hearing Panel, how would you rule?**

REALTOR® Sarah (who goes back to the seller alone, as a buyer's agent)

At the subsequent hearing, REALTOR® Joan defended her actions on the basis that since she had been invited to cooperate with REALTOR® Tom, and specifically because REALTOR® Tom had invited her to be present when the offer was presented, REALTOR® Joan assumed she had REALTOR® Tom's consent for subsequent direct contact with Seller Sarah. She stated further that she had a good reason for going alone because in her first visit to the client, REALTOR® Tom had undertaken to present the offer without fully understanding it and had made an inept presentation. The Hearing Panel questioned this, and REALTOR® Joan revealed that there had been some important considerations that REALTOR® Tom had not understood or explained to Sarah. REALTOR® Tom responded by saying: "I understood her offer perfectly, and I am offended that she called my presentation inept. If she thought I was missing something, she should have discussed that with me, and not gone behind my back to the seller!"

If you are the Hearing Panel, how would you rule?

REALTOR® Quinn (the cocktail party conversation)

At the hearing, REALTOR® Quinn acknowledged that she had been both surprised and disappointed when Professor Young listed his home with REALTOR® Pamela instead of with her. She also acknowledged that she had discussed the matter with Professor Young at his retirement party. In her defense, she called Professor Young as a witness. Professor Young testified that he had in fact told REALTOR® Pamela about his conversation with Quinn, adding that he had no idea that REALTOR® Pamela would file an ethics complaint. He also noted that he had raised the subject, not REALTOR® Quinn. "REALTOR® Quinn is a longtime family friend and I felt I owed her an explanation about why I listed my home with REALTOR® Pamela instead of with her."

REALTOR® Quinn concluded her defense noting that while Standard of Practice 16-13 requires REALTORS® to conduct dealings related to exclusively listed property with the client’s agent, there is an exception in cases where dealings are initiated by an exclusively represented client. She pointed out that her conversation with Professor Young could fairly be characterized as a “dealing” related to Professor Y’s exclusively listed home, and that her conversation with Professor Young, since it was initiated by Professor Young, did not violate Article 16 of the Code of Ethics.

How would you rule, as a Hearing Panel?

Wrap-up: What questions do you still have?