



# ETHICALLY SPEAKING



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## 2<sup>nd</sup> Quarter 2009

We have had several complaints lately that involve real estate activity during the transition period between the termination of an agent's license with one broker and the reissuance of the license with the new broker. The LREC's "Termination of Sponsorship" form, which is signed by both parties, clearly states "*I understand that I am prohibited from engaging in any real estate activity requiring a license until my license has been reissued.*" However, Respondent A in the following complaint was found in violation of the Code of Ethics, not because she was practicing real estate while her license was in transition, as that would be a violation of the LREC's Rules & Regulations, but because of the type of activity that she engaged in, which is an ethics violation at any time. Remember that REALTORS® who are found in violation must pay a \$500 administrative processing fee in addition to any fine imposed by the Hearing Panel.

Nell Carmichael  
Professional Standards Administrator

(link to 2008 Code of Ethics <http://www.nomar.org/Ethics/2008%20Code%20of%20Ethics.pdf> )

### **Decision of Ethics Hearing Panel of the Professional Standards Committee**

#### **Broker/First Realty vs. Respondent A & Broker B/Second Realty**

**I. Findings of Fact:** The basis for our decision is the conclusion of the Hearing Panel as to the following facts:

Respondent A was licensed with First Realty for numerous years. Her license was terminated on (date) and returned to the LREC that same date.

Shortly thereafter, her license was placed with Broker B at Second Realty. Broker B is the second respondent named herein.

The Complainant, the broker of First Realty, filed this complaint alleging that Respondent A violated Articles 1 (failure to treat all parties honestly), 9 (requiring that agreements be put in clear writing and copies given), 12 (truth in advertising), 13 (REALTORS® shall not practice law), 15 (prohibits false or misleading statements against competitors), and 16 (engaging in conduct inconsistent with the exclusive representation of another broker) and that Broker B violated Article 16.

The facts establish the following:

Subsequent to (date), the date of Respondent A's termination, she repeatedly contacted clients who had current listings with First Realty, seeking a cancellation of those listings.

Respondent A testified that she felt the listings were hers and not that of her broker and accordingly, she had a right to contact the owners.

Furthermore, she denied that there was a listing agreement pertaining to a property on Main St. which she also solicited, yet the evidence clearly reveals an attempt on her part to cancel this contract.

This evidence reveals a clear and repetitive violation of Article 16 on the part of Respondent A.

As to Broker B, he testified that he felt Article 16 allowed Respondent A to contact these various owners to give them general information about her new whereabouts. However, it is apparent that Respondent A's conduct goes far beyond generalized contact.

Article 16, as stated in SOP 16-2 and SOP 16-4, is intended to recognize as unethical *personal* solicitation of a current listing held by another broker. Broker B is clearly in error in believing that Respondent A's conduct was a "general announcement" of her whereabouts.

However, the facts reveal that Respondent A's solicitation was initiated by her before her license was placed with Broker B. Because there is insufficient information to clearly establish Broker B's involvement in the unethical solicitation, the panel is unable to find a violation on the part of Broker B, although he clearly misunderstands the provisions and limitations expressed under Article 16 of the Code of Ethics.

The panel also finds Respondent A violated Article 9 by refusing or delaying to provide copies of the Main St. property listing agreement which was dated (date) and initialed by the seller and signed on or prior to (date).

Furthermore, the panel finds that Respondent A acted dishonestly in violation of Article 1 by portraying herself as able to engage in real estate during the time that her license was being transferred. The termination form of the LREC clearly states that – "*I understand that I am prohibited from engaging in any real estate activity requiring a license until my license has been reissued.*" The conduct of Respondent A in preparing and advising listing cancellation agreements and placing them in the hands of former clients is not a truthful representation as to her status as an inactive licensee.

The panel finds that the provisions of Article 12, 13, and 15, considering Respondent A's conduct herein, are not applicable and were not violated and, accordingly, the complaint as to these articles is dismissed.

**II. Conclusions of the Hearing Panel:** The members of the Hearing Panel in the above- stated case, found Respondent A in violation of Articles 1, 9, and 16 of the Code of Ethics.

**III. Recommendation for Disciplinary Action:**  
Respondent A was fined and required to take educational classes in both ethics and LREC rules and regulations.