

NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

Case Interpretations Related to Article 10

Note: The following information is reprinted from the current NATIONAL ASSOCIATION OF REALTORS® *Code of Ethics and Arbitration Manual*.

Case #10-1: Equal Professional Services by the REALTOR® (Reaffirmed May, 1988.)

A minority couple called on REALTOR® A and expressed interest in purchasing a home in the \$130,000 to \$145,000 price range with at least three bedrooms, a large lot, and located in the Cedar Ridge area of town. Being familiar with Cedar Ridge through handling of numerous listings in that area, REALTOR® A explained that houses in Cedar Ridge generally sold in the price range from \$180,000 to \$220,000. The couple thereafter indicated that they would then like to see “what was available” within their economic means. After further discussion with the couple concerning their financial circumstances and the maximum price range they could afford, REALTOR® A concluded that the couple could not afford more than \$137,500 as an absolute maximum. The couple was then shown homes which met the criteria they had described to REALTOR® A. However, although REALTOR® A discussed with the couple the amenities and assets of each of the properties shown to them, they expressed no interest in any of the properties shown. A few days later, the minority couple filed charges with the Secretary of the Board, charging REALTOR® A with a violation of Article 10 of the Code Ethics, alleging that REALTOR® A had violated the Article by an alleged act of racial steering in his service to the minority couple.

The Secretary promptly referred the complaint to the Grievance Committee, which conducted a preliminary review and referred the complaint back to the Secretary, instructing that a hearing be arranged before a Hearing Panel of the Professional Standards Committee. REALTOR® A was duly noticed and provided with an opportunity to make his response to the complaint.

At the hearing, the minority couple elaborated upon their charge of the alleged racial steering by REALTOR® A, telling the Hearing Panel that they had specifically expressed an interest in purchasing a home in the Cedar Ridge area, but were not shown any homes in Cedar Ridge. REALTOR® A responded by producing written records documenting the housing preference of the couple as they had described it to him, including price range and demonstrating that he had shown them a number of listings that met the requirements as expressed by them, although admittedly none of the properties shown were located in Cedar Ridge. However, REALTOR® A explained that he had advised the minority couple that there were no listings available in Cedar Ridge falling within the price range expressed by them. Further, REALTOR® A produced listing and sales information concerning numerous homes in Cedar Ridge which confirmed an average sales price of \$180,000 to \$220,000. REALTOR® A told the Hearing Panel that he had, in fact, offered equal professional service to the minority couple by showing them properties which met the criteria they had presented to him. He pointed out to the Hearing Panel that the couple was charging him with “racial steering” which presumably they were relating to the denial of equal professional service. REALTOR® A stated, “If there were listings in Cedar Ridge in the \$130,000 to \$145,000 price range with at least three bedrooms and a large lot, and I had refused to show

them such listings, then they might have a point in their charge. But there are no such listings available now, nor have there been at any time since the original development of the Cedar Ridge area five years ago. I could not show them what did not and does not exist.”

The Hearing Panel concluded that REALTOR[®] A had properly met his obligation to offer equal professional service and was not in violation of Article 10.

Case #10-2: Denial of Equal Professional Service (Revised May, 1988. Revised November, 2001.)

On a Saturday morning, REALTOR-ASSOCIATE[®] B, a salesperson affiliated with REALTOR[®] A, answered a call from Prospect C, a recent college graduate who was moving into the city to take his first teaching job at Northwest High School. Prospect C was married, had two young children, and was a veteran.

After qualifying Prospect C for a three-bedroom home in the \$80,000 range, REALTOR-ASSOCIATE[®] B described available properties near Northwest High School and set up appointments to show houses to Prospect C. That afternoon, REALTOR-ASSOCIATE[®] B showed Prospect C and his wife three houses in neighborhoods near the high school.

On Monday, at a faculty meeting, Prospect C met Prospect D, who was also moving into the city to take a teaching position at the same high school and who was also in the market for a home. Prospect D was married with two young children and was also a veteran.

Prospect C told Prospect D of REALTOR-ASSOCIATE[®] B’s knowledge of the market and VA financing and how helpful he had been. Prospect D called REALTOR[®] A’s office that afternoon and asked for REALTOR-ASSOCIATE[®] B.

REALTOR-ASSOCIATE[®] B met Prospect D and determined Prospect D was also qualified for the \$80,000 range. Prospect D told REALTOR-ASSOCIATE[®] B that he was also a new teacher at Northwest High School and had been referred by Prospect C. Prospect D was black.

REALTOR-ASSOCIATE[®] B showed Prospect D houses in several neighborhoods undergoing racial transition but did not show Prospect D homes in neighborhoods near the high school.

Prospect D asked about houses closer to Northwest High School. REALTOR-ASSOCIATE[®] B replied that he had no knowledge of any homes in that area for which Prospect D could qualify. The next day, Prospect D, while visiting Prospect C, related his problems in finding a home near the high school and learned that REALTOR-ASSOCIATE[®] B had shown Prospect C several homes near the high school. Prospect D filed a complaint with the Board of REALTORS[®] claiming that REALTOR-ASSOCIATE[®] B had discriminated against him and his family by not offering equal professional services.

The complaint was reviewed by the Grievance Committee. REALTOR-ASSOCIATE® B was charged with an alleged violation of Article 10, and the complaint was referred to a Hearing Panel of the Board's Professional Standards Committee for hearing.

At the hearing, REALTOR-ASSOCIATE® B admitted that he did not use the same efforts to show Prospect D properties in neighborhoods near the high school as he did with Prospect C because he felt Prospect D and his family would feel more comfortable living in a racially integrated neighborhood.

The Hearing Panel found REALTOR-ASSOCIATE® B in violation of Article 10 of the Code of Ethics.

Case #10-3: Equal Professional Services by the REALTOR® (Revised November, 2001.)

REALTOR® A was contacted by Prospect C, a female head of household, concerning a home for sale which was advertised during the previous week in the newspaper's classified real estate section. When informed by REALTOR® A that the home in question had already been sold, Prospect C asked to be shown homes in the \$80,000 to \$90,000 price range with three bedrooms and located near schools and playgrounds. REALTOR® A proceeded to show Prospect C a number of homes which met her stated criteria for price range, size, and location, but Prospect C was interested in none of them.

Shortly thereafter, Prospect C filed a complaint with the Board of REALTORS® against REALTOR® A, complaining that he had violated Article 10 of the Code of Ethics by failing to offer equal professional service to her because she was a woman. Prospect C contended that she did not receive the same professional service from REALTOR® A that would have been afforded to a male head of household and home seeker with the same criteria for price range, size, and location.

The complaint was referred to the Grievance Committee and after its preliminary review and evaluation, the Grievance Committee referred it to the Secretary and directed that a hearing be arranged before a Hearing Panel of the Professional Standards Committee. The Secretary made the necessary arrangements and provided the proper notices and opportunity for response by REALTOR® A.

At the hearing, Prospect C expressed her complaint and concluded by saying, "It was obvious to me that REALTOR® A discriminated against me because I am a woman. In my opinion, he showed little interest in helping me to find a home."

REALTOR® A responded that he was sorry that Prospect C had that opinion, but that certainly he held no such attitude as charged. REALTOR® A advised the Hearing Panel that he routinely utilized a contact report for each prospect which includes identification information on the clients, provides data on the price range, type of house and location preferred by the prospect, and records the homes shown to the prospect with information on the price, type, and location of each home shown. REALTOR® A presented several such reports from his files including the report

pertaining to Prospect C. Prospect C's report showed that several homes shown to her met the data as supplied by her.

The Hearing Panel concluded that REALTOR® A's documented evidence did, in fact, establish a clear position in which equal professional service had been offered and that no violation of Article 10 had occurred.

Case #10-4: Use of "Choose Your Neighbor" Marketing Letters (Adopted November, 1987.)

REALTOR® A listed a property in a new subdivision. At the instruction of his client, Seller X, REALTOR® A did not file information on the listing with his Board's MLS, did not place a "For Sale" sign on the property and did not advertise the property in the local newspaper. Seller X had told REALTOR® A that he wanted the sale handled quietly, with the new purchasers being people who would "fit into the neighborhood—people with the same socioeconomic background" as the other residents of the subdivision.

Based on his conversation with Seller X, REALTOR® A's only marketing effort was mailing a letter to the other residents of the subdivision, inviting them "... to play a part in the decision of who your next neighbor will be. If you know of someone who you would like to live in the neighborhood, please let them know of the availability of this home, or call me and I will be happy to contact them and arrange a private showing."

REALTOR® A's marketing strategy came to the attention of REALTOR® B, whose mother lived in the subdivision. REALTOR® B filed a complaint charging REALTOR® A with a violation of Article 10 of the Code of Ethics.

At the hearing, REALTOR® B told the Hearing Panel of receiving a copy of the marketing letter from his mother, who had recently moved to the subdivision. REALTOR® B advised the panel that he had checked the Board's MLS for information on the property, had driven past the house to look for a "For Sale" sign and had scanned the Sunday real estate section of the local newspaper for information on the property. Finding no mention of the property in either the MLS or the newspaper and noting the absence of a sign on the property, REALTOR® B concluded that REALTOR® A's marketing strategy was to limit access to the property to individuals preselected by the current residents. "In my mind," said REALTOR® B, "this could only mean one thing. REALTOR® A was deliberately discriminating against home seekers from other areas, or those with different backgrounds, who would never have the opportunity to learn about the house's availability. Obviously, REALTOR® A was directing all of his marketing energies into finding purchasers who would not disrupt the ethnic and economic character of the neighborhood."

REALTOR® A defended his actions by advising the panel that he was acting on Seller X's instructions. Seller X appeared as a witness for REALTOR® A and confirmed this fact, adding that he and the other residents of his block had an informal agreement that they would try to find "suitable" purchasers for their homes if they ever decided to sell. Seller X felt that by broadening the marketing campaign to include all residents of the subdivision he had increased the chances of finding such potential purchasers.

The Hearing Panel found REALTOR® A in violation of Article 10 of the Code of Ethics. In their decision, the panel advised REALTOR® A that no instruction from a client could absolve a REALTOR® from the obligation to market properties without regard to race, color, religion, sex, handicap, familial status, or country of national origin, as expressed in Article 10. There was no doubt, in the panel's opinion, that the exclusive use of "Choose Your Neighbor" letters to market the property was designed to circumvent the requirements of Article 10.

Case #10-5: Use of "Choose Your Neighbor" Form Letters as Part of a Marketing Campaign (Adopted November, 1987.)

The ABC Board of REALTORS® received a complaint from a local fair housing group alleging that REALTOR® A was using discriminatory marketing techniques, in violation of Article 10 of the Code of Ethics, as the listing broker for a property in a new subdivision.

In support of their complaint, the fair housing group provided copies of "Choose Your Neighbor" form letters sent by REALTOR® A to current neighborhood residents. The letters announced that the property was on the market and invited neighborhood residents to contact REALTOR® A if they knew of anyone who they thought might be interested in purchasing the home.

At the hearing, REALTOR® A defended his use of "Choose Your Neighbor" form letters by demonstrating that they were just one element of his marketing campaign, and were not an attempt to restrict access to the property on the basis of race, color, religion, sex, handicap, familial status, or country of national origin as prohibited by Article 10. REALTOR® A produced copies of advertisements run in several newspapers, "OPEN HOUSE" flyers distributed at supermarkets throughout the town, and a copy of the property data sheet submitted to the Board's MLS. REALTOR® A remarked, "In my experience, the current residents of a neighborhood often have friends or relatives who have said that they would love to live in the neighborhood. It just makes sense to me to include contacting these folks in any marketing campaign!"

The Hearing Panel found REALTOR® A not in violation of Article 10. In their "Findings of Fact and Conclusions," the panel noted that the use of "Choose Your Neighbor" letters is not a per se violation of Article 10, but cautioned that such letters could be used in a manner inconsistent with the intent of Article 10. If used in conjunction with other marketing techniques and not as a means of limiting or restricting access to property on the basis of race, color, sex, handicap, familial status, or country of national origin, "Choose Your Neighbor" letters were another method of announcing a property's availability and attracting potential purchasers.