

Back by popular demand, here are more common situations that could find you facing ethics charges. And, while we know most sales associates don't purposely set out to violate their industry's ethical standards, it may be easier than you think. Read on.

Yikes Double More Ethics Violations

The list of things that might constitute a Realtors® Code of Ethics violation could stretch between Pensacola and Key West—possibly twice. And, while you're not destined to commit an ethics infraction, it's vital to understand your duties and obligations under the Realtors® Code of Ethics, to which the National Association of Realtors® (NAR) requires you adhere. Thinking you've done the right thing can differ vastly from knowing you've acted ethically.

Here are a few more common scenarios Realtors® may find themselves in a time or two during their careers.

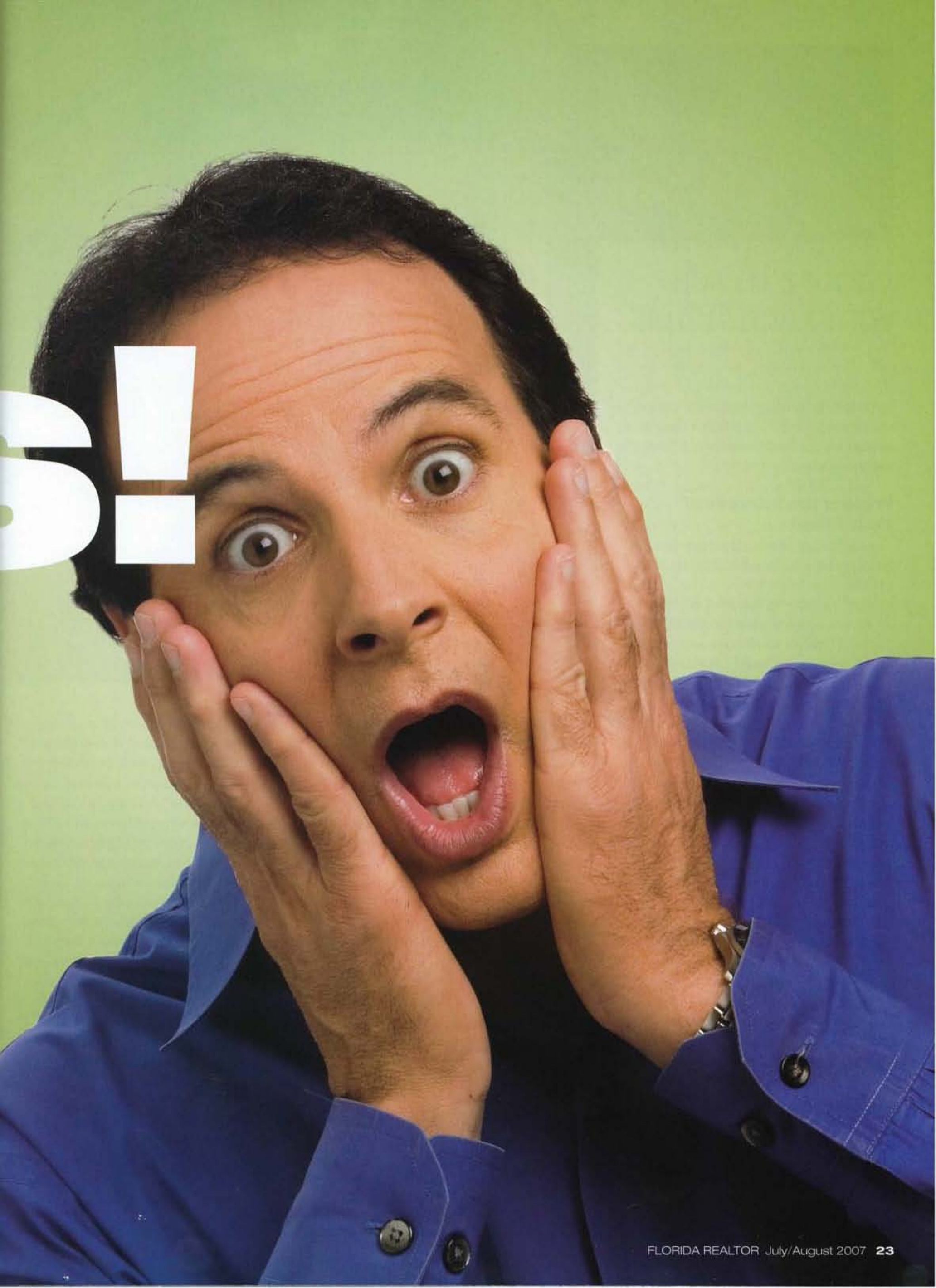
For Sale by Owner Properties

Sales associate Emily decided to sell her house without her broker's assistance. She placed a For Sale by Owner (FSBO) sign, including her phone number, in her yard. Emily's sign did not disclose her licensee status.

Though she'd seen others include this information on their FSBO signs, she didn't want to volunteer it, in order to ensure her house drew as many interested buyers as possible. She worried that disclosing her status on her sign might discourage people from looking at her house.

Why it's a violation: Article 12, Standard of Practice (SOP) 12-6, instructs Realtors selling or leasing unlisted properties in which they have an ownership interest that they must disclose their licensee status in their advertisements. Thus, Emily's FSBO sign needed to clearly reflect that Emily was the owner as well as a licensed sales associate.

Language on her sign such as "Owner/Agent" would fulfill this requirement. The goal of SOP 12-6 is to notify the public that a real estate professional is selling his or her own property, giving interested buyers the



You must disclose that you are a licensee if you choose to sell your own home.

option of retaining their own representation, since they likely know less about the real estate industry than the sales associate/seller.

Protect the Interest of Your Client

At a listing appointment, seller Sandra told Realtor Michael that she needed to sell her house quickly and wished to price it considerably below its recent appraised value. Michael advised Sandra of the commission he typically charged, and specified how much of that he would offer a broker who brought a successful buyer.

Sandra and Michael entered into a listing agreement, which specified Michael's commission, but did not include the amount he would share with a cooperating broker.

Back at his office, Michael realized that Sandra's low asking price would keep him from earning what he considered an "acceptable" commission, unless he kept more for himself. He then entered into the MLS an offer of compensation that was lower than the amount he'd told Sandra he'd share with a cooperating broker.

Why it's a violation: The main premise of Article 1 is laid out in its first sentence, which states, that "Real-



tors® pledge themselves to protect and promote the interests of their client." Once Michael and Sandra entered into their listing agreement, Michael assumed considerable responsibility for Sandra's interests, which included Sandra's need to sell her house quickly.

Yet, Michael determined that his own interests would not be served unless he kept more of the commission and offered less incentive to other brokers to actively market Sandra's property and procure a buyer.

Moreover, SOP 1-12 advises, among other things, that when entering into a listing agreement, Realtors have a duty to advise sellers of their company policies "regarding cooperation

and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities." Although Michael advised how much commission he would offer to cooperating brokers, he later lowered that amount without Sandra's approval.

Additionally, under Article 9, Realtors®, whenever possible, must reduce all agreements with clients to writing in "clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties," and SOP 9-1 reminds that "Realtors® shall use reasonable care to ensure that documents per-

Regardless of what capacity you are acting in (e.g., facilitator, transaction broker, etc.), you are obligated by the duties established in the Code of Ethics.



Be forthright and honest when advising prospective sellers about the value of their property.

was offering more commission than he had, but since her house sold anyway, she wasn't worried about it.

After closing, Alice approached Sandra and asked how much commission Michael initially said he would offer. After Sandra told her, Alice filed for arbitration to obtain the difference between what Michael offered and what he had told Sandra he'd share. She also filed an ethics complaint, alleging Michael violated Article 3 by not timely notifying her of a change in compensation, as per SOP 3-2.

Why it's not a violation: Under Article 3, SOP 3-1, "terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation."

Here, Alice saw the listing in the MLS, which contained the offer of compensation. Had she thought the offer low, she could have contacted Michael to see if a larger commission were possible. Instead, she began efforts to procure a buyer by showing Sandra's property and then presenting her buyer's offer.

Once Alice presented her buyer's offer, she was deemed to have accepted Michael's offer of compensation

whether she approved of it or not. Michael never changed anything in the MLS; he merely offered a lower commission than he had initially told Sandra he'd offer. So, while Michael's actions violated other Articles of the Code, it did not violate Article 3, because Alice never had any expectation of receiving a larger commission than the amount in the MLS. This means she also had no grounds to arbitrate for the difference between what she earned and what Michael was supposed to have offered.

Different Kinds of Representation

Sales associate Mary entered into her standard Limited Service Listing Agreement to list Nancy's property in the MLS and perform a few other select tasks. Realtor Tom saw this listing in the MLS. As he was familiar with Mary's company, he knew that she and Nancy had a limited service agreement.

So, Tom contacted Nancy and asked if she would consider using a full-service broker. He then described all the other services he could perform to supplement those that Mary offered.

Nancy expressed interest, and Tom became encouraged. He searched the MLS for Mary's other limited service listings and began contacting each of Mary's sellers to see if they, too, would be interested in a full-service arrangement. Tom did not believe his actions violated Article 16 because he was offering Nancy, and Mary's other clients, a different kind of representation than what they had with Mary (i.e., full service over limited service).

Why it's a violation: Indeed, Tom should have been worried about violating Article 16, which warns against

taining to the purchase, sale or lease of real estate are kept current through the use of written extensions or amendments."

Thus, Sandra could argue that Michael's listing agreement should have specified the amount of compensation he would offer to a cooperating broker. Once Michael determined the amount should be less, he should have contacted Sandra and, upon her approval, provided her a written amendment spelling out the change in compensation terms.

Offers of Compensation

A few weeks later, Alice searched the MLS and saw Michael's listing for Sandra's property (see preceding violation). She showed the property to her buyer, who decided to make an offer. Alice presented the offer to Michael, who passed it to Sandra, who accepted.

At the closing, Alice overheard the seller tell Michael that she thought he

As a property manager, you must competently manage the property with regard for the rights, safety and health of those lawfully on the premises.

Compensation in cooperative transactions should be agreed upon by the listing and cooperating brokers prior to the time the cooperating broker begins efforts to accept the offer of cooperation.

interfering with an exclusive contractual relationship existing between another Realtor and a client.

Many MLSs have local rules stating that a participant must have an exclusive listing agreement with his or her client before he or she can list property in the MLS.

Thus, when Tom saw Mary's MLS listing, he should have realized that an exclusive agreement existed, though Mary may not have done everything Tom would have. Even if he didn't realize that, under SOP 16-13 Tom still had a duty to ask Nancy if she were under any sort of exclusive representation agreement with another Realtor before offering to provide any substantive services, such as full-service representation.

It also appears Tom mistakenly thought SOP 16-3 allowed him to offer Nancy brokerage services that Mary

would not perform. However, SOP 16-3 permits a Realtor to contact another Realtor's client only to offer/provide "a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage)" on a particular property.

So Tom's intent, to offer full service compared to Mary's limited service, amounted to offering the same type of service on Nancy's property. Moreover, SOP 16-3 prohibits using "information received through [an MLS] or any other offer of cooperation" to "target clients of other Realtors® to whom such offers to provide services may be made."

Presenting Offers

Brenda called Charlie to schedule a showing of one of his listings. She left a voice mail message, but Charlie nev-

er called back. The next day, Brenda left another message, but again Charlie never responded. Brenda finally called Charlie's broker and scheduled a showing.

After the showing, her buyer decided to make an offer. When Brenda contacted Charlie to discuss the offer, he said he was too busy to deal with it then, but would call her later. The next afternoon, when Charlie still hadn't called, Brenda and her buyer prepared an offer and faxed it to Charlie's office.

Over the next two days, Brenda phoned Charlie several times to confirm he had received the offer. Charlie eventually called back and said that his seller was not interested. Brenda suspected Charlie never presented her buyer's offer, so she attempted to reach the seller directly to confirm.

Why it's a violation: Here we go with Article 16, again. As already discussed, a Realtor may not interfere with an exclusive contractual relationship existing between another Realtor and his or her client.

Typically, these relationships will be either an Exclusive Listing Agreement or an Exclusive Buyer Brokerage Agreement. Here, Brenda tried to contact the seller directly, although she knew he and Charlie had an Exclusive Listing Agreement.

Under SOP 16-13, "all dealings" with clients exclusively represented by Realtor No. 1 must be carried on with Realtor® No. 1, unless Realtor No. 1 provides express permission to Realtor No. 2 to contact the client directly.



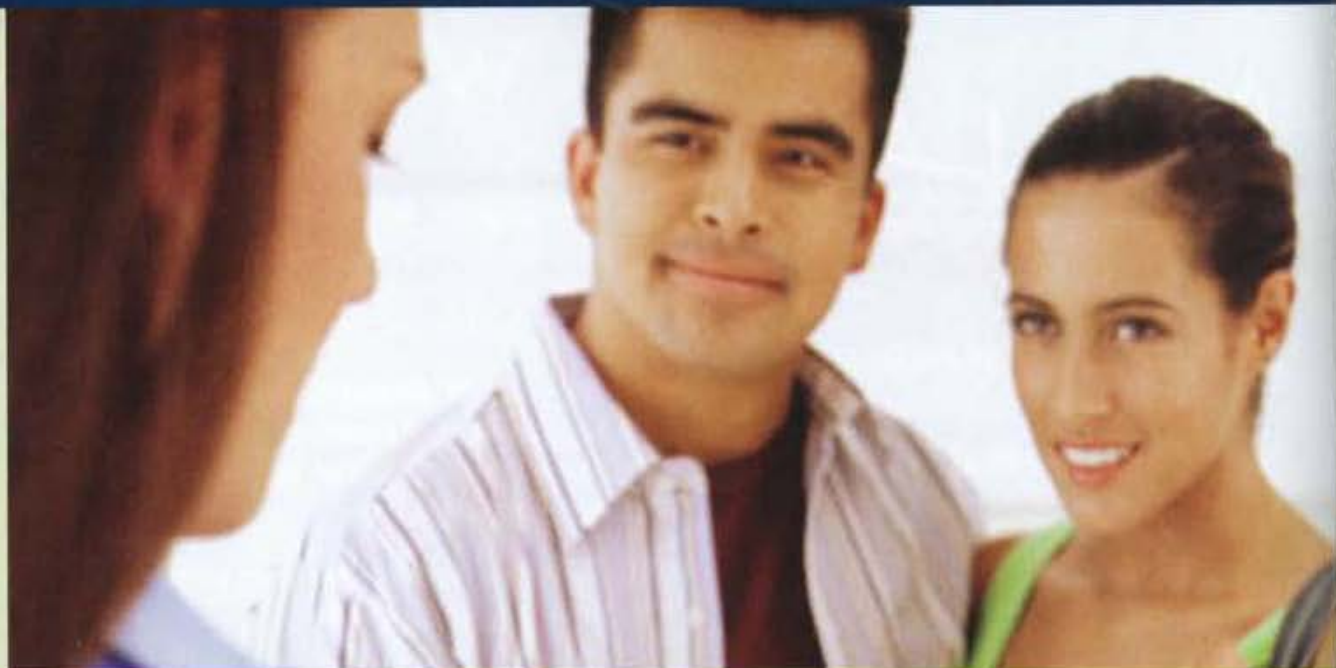
Disclose your REALTOR® or licensed status when seeking information about a property from another REALTOR® concerning property under a management or listing agreement.

CODE OF ETHICS

Remember that your obligation to preserve confidential information provided by your client continues after the termination of your agency relationship or non-agency relationship recognized by law. Latent material defects are not considered confidential.

Even in difficult situations such as Brenda's, Article 16 applies because asking a seller if he received an offer is considered "dealing." So Brenda's attempt to contact the seller could have exposed her to an ethics complaint. [Note that some MLSs have rules that contain very specific exceptions to the prohibition on contacting a seller directly. For further information, review your local MLS rules.]

However, with only the facts given, it does appear Charlie was not adequately representing his seller, given his lack of interest in scheduling Brenda's showing, discussing the offer or responding to Brenda's calls. This would be an Article 1 issue, if Charlie failed to protect and promote his client's interests and failed to work



When selling or renting any property, do not convey any preference, limitations, or discrimination based on race, color, religion, sex, handicap, familial status or national origin.

Listing brokers and cooperating brokers may enter into an agreement to change the cooperative compensation after the cooperating broker produces an offer to purchase or lease the property if both REALTORS® agree to the change.

diligently to sell the house.

For example, SOP 1-6 requires that Realtors submit all offers and counteroffers “objectively and as quickly as possible.” Thus, even if Charlie had a reason for disliking Brenda, it should not have affected his obligations to present Brenda’s offer and respond to her inquiries about scheduling a showing, discussing the offer or giving it to the seller.

Further, Article 3 mandates that “Realtors® shall cooperate with other brokers except when cooperation is not in the client’s best interest.” In this context, cooperation does not mean commission. Rather, Realtors® are expected to collaborate to facilitate the transaction and get the parties to a successful closing.

Note that SOP 3-8 specifies that “Realtors® shall not misrepresent the availability of access to show or inspect a listed property.”

While Charlie never denied access, he would not return Brenda’s calls to schedule a showing. He also claimed he was “too busy” to discuss the offer and then failed to call back later. It’s certainly possible that Charlie’s lack of interest in helping facilitate a transaction with his seller and Brenda’s buyer could be the subject of an Article 3 complaint.

Think we’ve covered everything? Not by a long shot! And don’t forget—especially in slower markets—Realtors often find themselves under stricter scrutiny than usual. Consequently, it’s

imperative to review the 2007 Code of Ethics in its entirety, to help yourself avoid ending up on the wrong side of an ethics complaint.

Got a question about the Realtors Code of Ethics? You can view the Code of Ethics online at www.realtor.org/realtororg.nsf/pages/narcode.

For questions about the Code, call FAR’s Legal Hotline, (407) 438-1409, Monday through Friday from 9 a.m. to 5 p.m. Please have your real estate license number available when you call. **FR**

This article was written by Florida Association of REALTORS attorney Kristy L. Harrington.