



NAR Case Interpretation: Is the Consumer Subject to an Exclusive Representation Agreement (Adopted May 2019)

NAR recently published a new Case Interpretation associated with Article 16; Standard of Practice 16-9. This standard of practice addresses the affirmative obligation of a Realtor® to determine whether a consumer is subject to a current exclusive agency relationship with another Realtor®. The new case study demonstrates that to meet the standard, a Realtor® must make reasonable, specific efforts to determine if a current exclusive agency agreement (listing or buyer agency) exists.

Realtor® A was holding an open house for their client's home, which had been on the market for several months, so Realtor® A was thrilled to see Buyer C approach the home after two hours with no visitors. Realtor® A gave her a tour of the space, but Buyer C indicated she was looking for more of a "fixer upper", as she had almost singlehandedly completed some significant renovation projects in her previous homes, and was looking for the perfect next project.

Realtor® A had another listing that she knew was perfect for Buyer C, and hadn't been listed in the MLS yet as the client had just signed their agreement earlier that morning. Realtor® A described the home to Buyer C, and offered to show it to her. Buyer C replied, "Oh, thank you, I am actually working with someone. I should probably ask them about it." Realtor® A responded, "that's fine, but to be honest, I'm not sure if your agent will even get a chance to see it. At the price at which it's listed, I'm confident it will sell before I can even get it in the MLS." Somewhat reluctantly, Buyer C agreed to let Realtor® A show her the second home. Realtor® A drafted an offer, which was accepted, and the parties completed a quick close.

Proud of a job well done for her client, Realtor® A was shocked when she received notice of an ethics complaint filed against her by Realtor® B, alleging a violation of Article 16 for interfering with his exclusive relationship with Buyer C. At the hearing, Realtor® B provided the hearing panel with copies of this exclusive buyer agency agreement with Buyer C, and Buyer C testified that she did tell Realtor® A she was working with someone, but felt pressured to tour and submit an offer with Realtor® A or risk losing the house.

Realtor® A defended her actions, stating, "Listen, if I had known that Buyer C had an exclusive agreement with someone, I would have backed off. But she never said that she was working with someone exclusively; just that she was working with someone. It's not my responsibility to fill in the gaps on what she told me or hammer her with questions and drive away a potential buyer just to determine what sort of relationship she has. That doesn't serve my client well."

The Hearing Panel decided that Realtor® A had violated Article 16, as Standard of Practice 16-9 provides, "Realtors® prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service." As Realtor® A had made no affirmative effort to ascertain whether Buyer C's relationship with another agent was exclusive or not, the Hearing Panel concluded she had made no reasonable efforts to determine the nature of the relationship as required by Article 16.