

Professional Standards Update: Disclose Accepted Offers with Unresolved Contingencies

REALTOR® A listed Seller S's house and placed the listing in the local association's MLS. Within a matter of days, REALTOR® X procured a full price offer from Buyer B. The offer specified that Buyer B's offer was contingent on the sale of Buyer B's current home. Seller S, anxious to sell, accepted Buyer B's offer but instructed REALTOR® A to continue marketing the property in hope that an offer that was not contingent on the sale of an existing home would be made.

A week later, REALTOR® Q, another cooperating broker working with an out-of-state transferee on a company-paid visit, contacted REALTOR® A to arrange a showing of Seller S's house for Buyer T. REALTOR® A contacted Seller S to advise him of the showing and then called REALTOR® Q to confirm that he and Buyer T could visit the property that evening. REALTOR® A said nothing about the previously-accepted purchase offer. REALTOR® Q showed the property to Buyer T that evening and Buyer T signed a purchase offer for the full listed price. REALTOR® Q left the purchase offer at REALTOR® A's office. REALTOR® A informed Seller S about this second offer. At Seller S's instruction, Buyer B was informed of the second offer, and Buyer B waived the contingency in his purchase offer. REALTOR® A then informed REALTOR® Q that Seller S and Buyer B intended to close on their contract and the property was not available for purchase by Buyer T.

REALTOR® Q, believing that REALTOR® A's failure to disclose the existence of the accepted offer between Seller S and Buyer B at the time REALTOR® Q contacted REALTOR® A was in violation of Article 3 of the Code of Ethics, as interpreted by Standard of Practice 3-6, filed an ethics complaint with the association of REALTORS®. At the hearing, called to consider the complaint, REALTOR® A defended his actions noting that while Buyer B's offer had been accepted by Seller S, it had been contingent on the sale of Buyer B's current home. It was possible that Buyer B, if faced with a second offer, could have elected to withdraw from the contract. REALTOR® A argued that continuing to market the property and not making other brokers aware that the property was under contract promoted his client's best interests by continuing to attract potential buyers.

The Hearing Panel disagreed with REALTOR® A's justification, pointing to the specific wording of Standard of Practice 3-6 which requires disclosure of accepted offers, including those with unresolved contingencies. REALTOR® A was found in violation of Article 3.