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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29322-0

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

WASHINGTON PROFESSIONAL REAL ESTATE, LLC,
d/b/a Prudential Almon Realty,

Appellant

vs.

DR. KIPP YOUNG, et ux.

Respondents.

**BRIEF OF WASHINGTON REALTORS® AS AMICUS CURIAE
IN SUPPORT OF WASHINGTON PROFESSIONAL REAL
ESTATE, LLC, d/b/a Prudential Almon Realty**

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I. INTRODUCTION

Washington Professional Real Estate, LLC, d/b/a Prudential Almon Realty ("Prudential"), a member brokerage of Washington REALTORS®, served as the listing broker for a home in Yakima ("Property") under an exclusive agency listing agreement ("Listing"). As a result of its efforts under the Listing and as the agent of the prospective Sellers, Dr. and Mrs. Young ("Youngs"), a yard sign and flyers provided by Prudential set in motion an unbroken series of events that culminated in the property's sale to the ultimate purchasers, the Eastmans. In cross-motions for summary judgment, the trial court apparently determined as a matter of law that Prudential's actions and the following unbroken series of events that led to the ultimate sale were inadequate to satisfy the procuring cause doctrine. This holding, if affirmed, would represent a significant departure from existing decisions governing and defining the procuring cause doctrine applied to real estate professionals in the state of Washington. It would lead to more confusion and a lack of predictability and inconsistency in future matters involving the procuring cause doctrine. Pursuant to RAP 10.6, Washington REALTORS® files this brief as amicus curiae and urges reversal of the trial court.

II. INTEREST OF AMICUS CURIAE

Amicus Washington REALTORS® is a statewide trade association of approximately 17,000 real estate licensee members ("Brokers"). Its members are involved in all aspects of the residential and commercial real estate industries. Brokers, like the customers and clients they serve, have a significant interest in defining the relative rights and responsibilities among them, and attempting to ensure that established doctrines, such as the procuring cause doctrine, are consistently and properly applied.

III. STATEMENT OF THE CASE

This appeal arises out of the trial court's entry of summary judgment in favor of the Youngs and against Prudential on Prudential's claim for a listing side commission. The underlying facts, as set out in the briefs of both Appellant and Respondent, do not appear to be materially in dispute.

The Listing was executed between Prudential and the Youngs. It designated Prudential as the Youngs' exclusive agent entitling Prudential to receive at least the listing side commission if the Property was sold to anyone during the listing period, regardless of whether Prudential was directly involved with the purchaser. The Listing also provided that

Prudential was entitled to at least the listing side commission if the Property was sold during the year following expiration of the listing, to anyone whose attention was brought to the Property through the yard sign or directly or indirectly through any information provided through Prudential. Throughout the listing period, Prudential expended a great deal of time, effort, money and expertise to market the Property.

In late 2008, the Eastmans were planning to move to Yakima, but were physically in another state. Mrs. Eastman's brother assisted by looking for suitable available properties in the Yakima area and, at times, emailing addresses for potential properties to the Eastmans. During the listing period, Mrs. Eastman's brother saw the Prudential yard sign at the Property, and stopped and took a flyer describing features related to the Property. Before the Eastmans came to Yakima, Mrs. Eastman's brother emailed the Property's address to them as one of the properties they should consider.

When the Eastmans arrived in Yakima, Mrs. Eastman's brother accompanied them, along with their own buyer's broker, as they viewed various properties. After the group viewed a property within five or six blocks of the Property, Mrs. Eastman's brother had them drive to the Property, based on his knowledge derived from the sign and, most likely,

the flyer. The Property had not been identified as being available by the Eastmans' broker.

When the group arrived in front of the Property, the Prudential listing sign was gone, but Mrs. Eastman was immediately interested in the Property. Mrs. Eastman's brother knew the owners of the property next door and indicated he would inquire as to whether the Property was still available.

The next day, Mrs. Eastman and her brother encountered the owner of the neighboring property and inquired whether she knew if it was still offered for sale. There is no suggestion or inference the Eastmans or anyone on their behalf were generally inquiring of people they encountered as to whether they were aware of any neighboring property owners who might be interested in selling their properties. Instead, the inquiry was only made because the Eastmans, through Mrs. Eastman's brother, were aware the Property had been listed for sale shortly before the Eastmans' arrival in Yakima.

After that, the Eastmans were introduced to the Youngs and the parties began negotiating for the sale and purchase of the Property. When Prudential learned how the Eastmans had become aware of and were introduced to the Property, Prudential informed the Youngs they believed

they were entitled to listing side commission as the procuring cause of the transaction and offered to assist in drafting and providing service for the remainder of the transaction. The Youngs refused to permit Prudential from being further involved.

The trial court determined, as a matter of law, that the above undisputed series of events was insufficient to satisfy required elements of the procuring cause doctrine. The trial court apparently adopted the Youngs' argument that (1) Prudential's actions were too minimal; (2) that further substantial and ongoing involvement in the transaction would have been necessary; and (3) direct contact between Prudential and the eventual buyer would have been necessary.

The trial court's position is at odds with the procuring cause doctrine as established by prior case law. Further, lack of a broker's participation in negotiating a transaction on behalf of a seller should never be applied to preclude the broker's commission rights when the broker has offered to provide assistance, but the offer has been rebuffed by the seller.

IV. ARGUMENT

A. The Procuring Cause Doctrine.

In Washington, a broker is considered the procuring cause of a sale if he or she sets in motion a series of events culminating in a sale. *Professionals 100 v. Prestige Realty, Inc.*, 80 Wn.App 833, 911 P.2d 1358 (1996). The doctrine is apparently satisfied if there is a direct causal connection between the broker's action and the eventual sale, even if the connection is minimal. See gen. *Lloyd Hammerstad, Inc. v. Saunders*, 6 Wn.App 633, 495 P.2d 349 (1972). The doctrine, as established, does not require that the broker be directly or substantially involved in all phases of a transaction in order to be considered the procuring cause of the sale. *Bonanza Real Estate, Inc. v. Crouch*, 10 Wn.App 380, 517 P.2d 1371 (1974).

There is also dicta suggesting that a secondary requirement exists for application of the procuring cause doctrine when applied to a buyer's broker, that the broker be more than minimally involved with the property. (Emphasis supplied.) *Roger Crane & Assoc. v. Felice*, 74 Wn.App 769, 875 P.2d 705 (1994). There is no question Prudential was very involved with the Property over many months and its lack of assistance in the transaction only occurred because its offers of help were refused.

By determining in its letter ruling that Prudential's efforts were "less than minimal," the trial court was not only incorrect, it improperly

analyzed the purpose, intent and focus of the procuring cause doctrine. Under the doctrine, the focus is on whether the broker's actions set in motion a series of events that led in an unbroken sequence to the sale, i.e. had a direct causal connection. Engrafting onto that doctrine a separate requirement that ongoing participation for the purchase or that some form of significant additional conduct be required is not within the scope of the doctrine and should not be compelled, especially where assistance was offered, but was refused. Finally, nothing in the doctrine does or should require a listing broker to deal directly with a prospective purchaser. Such a requirement would ignore that which a listing broker is reasonably expected to accomplish in attempting to bring about a sale.

B. The difference between a listing broker and a selling broker.

In analyzing the goal that a broker sets out to accomplish, it is important to distinguish between listing brokers and selling brokers. Their roles in attempting to assist buyers and sellers to complete a sale and purchase transaction, thereby accomplishing that which they set out to do, are not the same.

i. The listing broker's role.

The listing broker's job is typically to market the property using various tools and techniques in an effort to maximize the property's exposure to prospective purchasers and other brokers. See 1 WASH. STATE BAR ASS'N, Washington Real Property Deskbook § 2.1 (3d ed.1997). As in this case, listing brokers generally operate under written listing agreements that provide the listing broker represents the seller. In exclusive listings, such as the one involved in this case, the listing broker is entitled to a commission when a buyer is procured, regardless of whether that broker or another broker actually procures and works with the buyer. The listing broker usually does, and in this case did, expend considerable time, effort, training, expertise, connections and money to market the property. Unless and until the goal is accomplished of having a buyer be procured, the seller pays nothing for any of that service or the funds expended by the listing broker.

The customary tools used to market a property, all of which were apparently employed here, include listing the property with a multiple listing service in which the listing broker pays to participate, paying for and producing advertisements for the property for sale, paying for and placing signs at the property, taking the time and money to hold the

property open for viewing by other brokers and potential buyers, and producing flyers and other promotional materials.

The parties' listing agreement, and the listing broker's reasonable expectation, is that if any of the employed tools or efforts succeed in procuring a buyer to purchase the property at a price and on terms acceptable to the seller, the listing broker will be paid at least a listing side commission. The duration of the Sellers' commission obligation is fixed based on the listing agreement.

In this case, the listing expired December 31, 2008, and provided that a commission would still be payable in the event any buyer purchased the Property after having been introduced to the Property through the signs or directly or indirectly through any information from the listing broker. That formulation is typical of the vast majority of listing agreements utilized in the state of Washington.

Based on the role customarily played by the listing broker and the fact that many buyers utilize their own buyer's brokers, it should be reasonably anticipated that a listing broker would not have contact with the ultimate purchaser of a property. Unless the listing broker were also the selling broker, it would be extremely uncommon and would generally constitute a breach of the Realtor's Code of Ethics to directly contact or

attempt to deal with a buyer represented by a buyer's broker regarding a pending transaction. See Code of Ethics and Standards of Practice of the National Association of REALTORS®, Effective January 1, 2008, Article 16 (attached as Appendix "A").

ii. The selling broker's role.

The counterparts to the listing brokers are the brokers working with prospective buyers; customarily referred to as "selling brokers." The customary role of the selling broker is to introduce buyers to properties available for sale. 1 WASH. STATE BAR ASS'N, Washington Real Property Deskbook § 2.1 (3d ed.1997). The selling broker may or may not have a written agency contract with their clients and any agency relationship may or may not be exclusive. If not exclusive, the potential exists that a buyer could work simultaneously with different brokers or in a particular transaction with no broker at all. Since 1997, RCW 18.86.020(1) creates a presumption that a selling broker, by working with the buyer, is the buyer's agent unless the selling broker is the seller, the listing agent, a seller's subagent, a dual agent or has entered an agreement not to represent the buyer.

iii. The objectives of the two types of brokers.

Based on the foregoing, the functions of listing brokers are geared toward exposing a property to the market. They accomplish what they set out to do under their listing agreement when a buyer is procured who purchases the property, regardless of whether they found or dealt directly with the buyer. If the listing broker's efforts set in motion the series of events culminating in the sale, it is considered the procuring cause of the sale. It will also be considered to have provided the buyer. See *Professionals 100 v. Prestige Realty, Inc.*, 80 Wn.App 833, 842, 911 P.2d 1358 (1996).

The function of the selling broker is to introduce a buyer to an available property. If the selling broker introduces a buyer to a property, has established an agency relationship with the buyer by express agreement or implication, has a substantial enough connection to the property that is purchased, and their efforts set in motion an unbroken series of events, they will have met the requirements of the procuring cause doctrine. If they start performance efforts and their efforts cease or do not lead in an unbroken series of events to a transaction, they will not satisfy the doctrine. *Roger Crane & Assoc. v. Felice*, 74 Wn.App 769,

875 P.2d 705 (1994) and *Haskell v. Raugust*, 49 Wn.App 719, 724, 745 P.2d 535 (1987).

Since the doctrine is equitable in nature, an exception should arise in favor of either a listing or selling broker if a portion of their required performance, or a break in the series of events leading to the sale, resulted from a seller's or buyer's wrongful conduct or refusal to permit assistance.

iv. The seller's reasonable expectations and commitments.

As noted above, a seller typically enjoys their listing broker's time, skill, industry connections and money. The effort is provided at no expense to the seller, unless the broker's efforts lead to a sale. The bargain a seller strikes in accepting those efforts is that their broker will be compensated if the property is sold during the listing period, or during an agreed tail period if the broker's efforts have produced the hoped for result. By accepting all benefit of the listing agent's work, when that work leads to the precise purpose for which the relationship was entered, sale of the house, the seller has received the entire benefit of their bargain. Having received all of their bargained for benefit, considerations of equity and fairness, enforceable under the parties' listing contract and/or the

procuring cause doctrine, dictate that the seller honor their commission obligation.

C. Cases relied upon by the Youngs and the trial court are not applicable.

In their summary judgment motion the Youngs principally argued, and the trial court apparently believed, this case is governed by the rulings in *Roger Crane & Assoc. v. Felice*, 74 Wn.App 769, 875 P.2d 705 (1994) and *Lloyd Hammerstad, Inc. v. Saunders*, 6 Wn.App 633, 495 P.2d 349 (1972).

In *Crane*, the broker seeking commission under a procuring cause analysis was a selling agent attempting to represent only the buyers. The broker apparently had no representation agreement with the sellers or the buyers. The court found no express or implied commitment or obligation on the part of any of the buyers to utilize the services of the broker (a result that might be different after adoption of RCW 18.86.020(1) in 1997).

Further, unlike this case and despite what appears to have been a fair amount of effort on the selling broker's part to become involved with the subject property, the broker did not set in motion an unbroken series of

events that led to the sale. The putative selling broker had informed the buyer of the subject property, had driven the buyer by the property, and had unsuccessfully attempted to arrange a showing of the property's interior. In this way, the selling broker had arguably set in motion a series of events that, had the buyer expressly or impliedly agreed to work with the selling broker, may have satisfied the procuring cause doctrine if those efforts had led in an unbroken series of events to the ultimate sale.

However, the buyer actually viewed the subject property's interior due to a completely unrelated event having nothing to do with the selling broker. Instead, the buyer's broker was actually introduced to the property by a mutual friend of the buyer and the seller who privately arranged for the buyer to view the seller's property and suggested that he might be interested in it. The buyer did not realize that the property was the one the broker had tried to show him until he arrived at the property.

The procuring cause doctrine was not met because the series of events initiated by Crane was broken by a completely unrelated circumstance and event, the unrelated actions of the seller's friend. Under the facts, that would have happened and there is no reason to believe the transaction would have proceeded differently, if Crane had never been involved.

Similarly, in *Lloyd Hammerstad*, a selling broker was working with a couple interested in purchasing a home. On one day, the selling broker drove the husband by approximately 40 houses, one of which was the subject house, which was listed with another broker. There was some dispute regarding the price at which the selling broker informed the husband the property could be acquired, but in any event the husband was not interested. Arguably, the selling broker had introduced the buyer to the property and attempted to begin a series of events that could lead to a sale.

However, at a later time, one of the seller's friends took the wife of the buying couple to the home for social reasons. The seller and the buyer discussed the property's availability and that started an independent series of events that led to the successful sale and purchase of the property. Again, there was no indication this unrelated and independent introduction of the buyer to the property through the seller's friend would have had any different outcome if the unsuccessful selling broker had never been involved.

In both cases, the series of events initiated or attempted to be initiated, by the buyer's broker proved unsuccessful. In both cases, events occurred having no connection to or relationship with the buyer's broker's

efforts. The clear requirements of the procuring cause doctrine were simply not met.

This case is entirely unlike *Crane* or *Lloyd Hammerstad*. In this case, Prudential and the Youngs entered an exclusive listing contract under which Prudential was the exclusive agent and representative of the Youngs in marketing their property and would be entitled to a commission if the property was purchased by anyone during the listing period or, under certain circumstances for 365 days after termination of the listing period.

Since a buyer was procured, even through others, based on information obtained through the signs or directly or indirectly on some information from the listing broker during the listing period, the Youngs were not at liberty to attempt to exclude Prudential as the listing broker for the transaction and its commission was earned. Every event that followed Mrs. Eastman's brother having seen the listing sign and taken a flyer causally led in an unbroken series of events to the eventual sale. There was no intervening unrelated event that broke the causal sequence as occurred in *Crane* and *Lloyd Hammerstad*.

There is suggestion in the Youngs' briefing that this Court should speculate as to whether the Eastmans might have obtained information about the property from the Youngs' neighbor in any event, even if Mrs.

Eastman's brother had not seen the sign. Nothing in the procuring cause doctrine requires that, but for the broker's actions, no sale would have occurred. The broker needs only to show is that the broker's action set in motion an unbroken series of events that led to the sale and that the broker was acting on behalf of the seller or buyer when the broker did so. No case has ever equated "procuring cause" with "proximate causation."

Even if a Court were inclined to engage in such a discussion, a court should not engage in speculation or conjecture as to what might have happened if the facts were other than they are. There is no reason to believe the Eastmans would have asked the Youngs' neighbor about the potential availability of the Youngs' home if the Eastmans had never been advised the Property had previously been listed. The procuring cause doctrine should be applied based only on what actually happened. Litigation never turns on speculation or conjecture over what possibly could have happened under different facts. See Boguch v. Landover Corp., 153 Wn.App 595, 610-615, 224 P.3d 795 (2009).

V. CONCLUSION

For the sake of sellers, buyers, listing brokers and selling brokers, the procuring cause doctrine should be reconfirmed and applied to

uniformly and consistently achieve results based on the criteria stated in the doctrine itself. Additional unrelated requirements, such as a requirement that a listing broker have direct substantial contact with a buyer, when that is not the listing broker's role, should not be engrafted into the doctrine. A listing broker's actions are sufficient and material under the clear language of the procuring cause doctrine, if they set in motion an unbroken series of events that leads to a sale. In that circumstance, a seller has received all benefit from the listing broker's efforts that the seller could reasonably have expected to receive and for which the seller should expect, and equity should require, that the listing broker will be compensated. The listing broker, whose time, efforts and money conferred those benefits, should be determined to be entitled to receive the compensation for which the parties bargained.

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RESPECTFULLY SUBMITTED this 21st day of December

2010.

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Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2008

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

• Standard of Practice 1-1

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

• Standard of Practice 1-2

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

• Standard of Practice 1-3

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• Standard of Practice 1-4

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)



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• **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. *(Amended 1/92)*

• **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

• **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about competitors' businesses and competitors' business practices includes the duty to not knowingly or recklessly repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07)*

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. *(Amended 1/04)*

• **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

• **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to 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) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

• **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

• **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

• **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

• **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

• **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

• **Standard of Practice 16-9**

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. *(Amended 1/04)*

• **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or

broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

• **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

• **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

• **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

• **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

• **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

• **Standard of Practice 16-17**

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

• **Standard of Practice 16-18**

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

• **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 16-20**

REALTORS®, prior to or after terminating their relationship with their current firm, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award. *(Amended 1/01)*

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

• **Standard of Practice 17-2**

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/93)*

• **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

• **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential