CASE INTERPRETATIONS RELATED TO ARTICLE 12:

Case #12-1: Absence of Name on Sign

(Reaffirmed Case #19-3 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

Prospect A observed a sign on a vacant lot reading: "For Sale—Call 330-5215." Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised and offended that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR-ASSOCIATE® B in REALTOR® A's office.

Prospect A filed a complaint against REALTOR® A and REALTOR-ASSOCIATE® B. REALTOR® A and REALTOR-ASSOCIATE® B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR® A stated that he permitted REALTOR-ASSOCIATE® B to put up the sign. REALTOR-ASSOCIATE® B's defense was that the sign was not a "formal" advertisement, such as a newspaper advertisement, business card, or billboard, to which he understood Article 12 to apply.

The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR-ASSOCIATE® B were in violation of Article 12.

Case #12-2: Exaggeration in Advertising

(Reaffirmed Case #19-4 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

Prospect A noted REALTOR® B's classified advertisement describing a home with five acres "about 20 miles from the city" giving directions to the "modern 3-bedroom home, well maintained, and set in a charmingly landscaped site."

After visiting the property, Prospect A clipped out the ad and pasted it to a letter to the Board of REALTORS® complaining of the gross exaggeration it contained, which had induced him to waste time and money in inspecting the property. The property, he said, was actually 36 miles from the city limits. Its wood-lath support for plaster, which was visible in many large breaks in the walls, indicated it to be 40 years old or more. There was no evidence of painting in recent years. Several windows were broken, half of the back steps were missing. The house was located at the end of a crude dirt road in a small cleared area that had become densely overgrown in weeds—a picture of extreme neglect.

REALTOR® B was asked to respond to the charge of misleading advertising, and a hearing was called on the complaint by the Professional Standards Committee. REALTOR® B criticized the complainant for bringing the matter to the Board, pointing out that Prospect A had failed to mention that the property was priced at only $30,000; that at such a price it was an exceptionally good buy to anyone looking for a small place with a few acres; that to get attention to such properties it was necessary to do a bit of "puffing" to attract attention in advertising; that as a matter of fact the general lines of the house were similar to many of modern design; that the house had been well enough maintained to be salvageable by anyone who would do a reasonable amount of work on it; and that, in his opinion, the site was truly "charming" in its rugged simplicity.

The Hearing Panel concluded that REALTOR® B had used gross exaggeration in his advertisement and was found in violation of Article 12 of the Code of Ethics.

Case #12-3: Exaggeration in Advertising

(Reaffirmed Case #19-5 May, 1988. Transferred to Article 12 November, 1994. Revised April, 1998.)

In his efforts to sell a furnished apartment building, REALTOR® A, the listing broker, used newspaper advertising describing the property, including such phrases as "modern furnishings . . . most units newly equipped with ranges and refrigerators . . . excellent earnings record." Buyer B saw the ad, called REALTOR® A, was shown the property, signed an offer to buy, and wrote a check for a deposit. A few days later, he made a more careful inspection of the property and its earnings statements, and filed a complaint against REALTOR® A with the Board of REALTORS® charging misleading and exaggerated advertising.

The complaint was referred to the Grievance Committee which, after its review and evaluation, referred it to the Secretary directing that a hearing be scheduled before a Hearing Panel of the Professional Standards Committee.

At the hearing, Buyer B stated that because of certain pressures on him at the time, prudently or not, he had acted hurriedly in his business with REALTOR® A; that if the principle of caveat emptor governed the situation, he recognized the weakness of his position; that he also understood that his legal recourse was questionable; but that from the standpoint of ethical conduct he felt he had a grievous complaint against REALTOR® A that should be addressed.

He explained that he had been looking for just such an investment property in the general location; that the price appealed to him; that he had only a very limited time available on the day he was shown the property; that the three apartments which he was shown were attractively furnished and obviously had nearly new equipment in excellent condition; and that he had thought it advisable to make an offer, feeling that he could place full reliance on REALTOR® A's representation of the property both in his oral statements and his newspaper advertising.

His second, and more thorough, inspection revealed that the three apartments shown to him were the only apartments in the building with modern furnishings; the other nine had unattractive, badly worn and outmoded furnishings, with kitchen ranges and refrigerators more than ten years old. Moreover, he said, the earnings record of the building, which by ordinary standards was satisfactory for the two years immediately preceding, had shown high vacancy and a loss in two of the ten years of the building's life, had shown a definitely low return in three years, and had never shown an earnings record that could be described as "excellent".

Upon questioning as to whether full records of income and expenses had been submitted to him before he signed the contract, Buyer B said he was shown only the statements for the two proceeding years by REALTOR® A, who said that the other statements could be obtained for him, as was later done.

Responding to Buyer B's specifics, REALTOR® A pointed out that the complaint did not charge him with misrepresenting anything in his oral statements to Buyer B; that the complaint, therefore, was based solely on his advertisement which he felt did not depart from accepted standards in advertising; that since the building was about ten years old, he felt free to say that all of its features, including the furnishings, were "modern"; that when he stated "most units newly equipped with ranges and refrigerators" he based that, too, on the fact that the building was about ten years old; and that, in his opinion, the earnings record of the building for its entire operating life, since it had shown a loss in only two of its ten years, could reasonably be described as "excellent".

Questioning of REALTOR® A revealed that the three apartments shown to Buyer B were, in fact, furnished with better and more modern furniture than the other nine apartments, and that these three were the only apartments in which the original ranges and refrigerators had been replaced. REALTOR® A's comment on this was, "Naturally, in showing the building, I directed attention to the most attractive features. This is just ordinary competence in selling."

It was the conclusion of the Hearing Panel that REALTOR® A's advertising used exaggeration and had not presented a true picture in his representations to the buyer. REALTOR® A was found in violation of Article 12.

Case #12-4: True Picture in Advertising

(Reaffirmed Case #19-6 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A was the exclusive marketing agent for a home building organization in Redtown, a suburban community within a metropolitan area that also contained the communities of Whitetown and Bluetown. As part of his sales effort, he ran the following newspaper advertisement:

Greenwood
In Redtown
STARTLING NEWS

On an identical house bought at "Greenwood" in Redtown, we have found that the difference in tax rates allows you to get $5,000 more house free than if you bought the same house in Whitetown or Bluetown. We have been doing some figuring, and here's what we came up with:

Plan A—built in Whitetown
Taxes approximately . . . $1,200

Plan B—built in Bluetown
Taxes approximately . . . $1,050

Plan C—built in Redtown
Taxes approximately . . . $650

This means that in Redtown your monthly payments for the same house would be approximately $46 less than in Whitetown, and $33 less than in Bluetown. Since principal and interest are the same, you get $5,000 or more house FREE when you buy in Greenwood.

REALTOR® B objected to the ad and sent it with a complaint to the Secretary of his Board, charging that the ad was misleading. The Secretary referred it to the Grievance Committee. The Grievance Committee, upon consideration, referred it back to the Secretary to schedule a hearing before a Hearing Panel of the Professional Standards Committee. The Hearing Panel considered the matter in a hearing attended by REALTORS® A and B.

It was the panel's opinion that it is not unethical to point out the current tax differentials of various municipal jurisdictions, but that the final paragraph of the advertisement in question constituted an attempt to capitalize on a tax differential that is not predictable. To offer $5,000 or more house "free" based upon indefinite continuation of a current tax situation, which is not certain, is misleading. Therefore, the Hearing Panel concluded, the ad violated Article 12 of the Code of Ethics in that it did not present a true picture that could be assured by REALTOR® A.

Case #12-5: True Picture in Use of "Sold" Sign

(Revised Case #19-7 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A, the listing broker, was charged by REALTOR® B with giving a false picture in his advertising by putting up a "sold" sign on property that had not been sold. REALTOR® A was notified of the complaint and of the date of a hearing on it scheduled before a Hearing Panel of his Board's Professional Standards Committee.

Undisputed testimony offered during the hearing revealed that REALTOR® A was an exclusive agent, offering Client C's home for sale. An offer to buy was obtained from Prospect D and a counter proposal by Client C was accepted. An earnest money deposit was made, and a date for settlement was agreed upon. At that point, REALTOR® A put up his "sold" sign. Several days later, Prospect D received an unexpected notice from his employer that he was to be transferred to another city. Prospect D immediately contacted REALTOR® A and Client C about his predicament. In an amicable discussion it was agreed that everyone had acted in good faith; that the property was readily marketable; that the earnest money deposit would be refunded; and that REALTOR® A would put the property on the market again. A week later, when REALTOR® B was showing a number of houses to a prospective buyer, they drove by Client C's property, and the prospect casually said that she didn't understand the "sold" sign, since she had been taken to see the house that morning by REALTOR® A.

REALTOR® B contended that a "sold" sign is a measure of a REALTOR®'s advertising, and that it cannot give a true picture if it is put up prior to the settlement and actual transfer of ownership.

The Hearing Panel's decision agreed with REALTOR® B's contention that the use of a "sold" sign constitutes advertising by a REALTOR® but did not agree that a "sold" sign could be put up only after the actual settlement and transfer of ownership. The decision indicated that after the client's acceptance of a bona fide offer, REALTOR® A could consider that he had brought about a sale and would not be in violation of the requirement to give a "true picture" by putting up a "sold" sign. However, once it was clear that the sale had fallen through, the "sold" sign should have been immediately removed since allowing the sign to remain in place no longer provided a "true picture."

REALTOR® A was found by the panel to have violated Article 12.

Case #12-6: Misleading Advertising (Reaffirmed Case #19-8 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A's business included real estate brokerage, property management, and home building. In one of his newspaper advertisements of his home building activities, in which he identified himself as a REALTOR®, there was prominently featured the words, "Buy Direct and Save." REALTOR® B sent a copy of the advertisement to the Board of REALTORS® as the basis of a complaint that REALTOR® A in his advertising was, through use of the quoted phrase, seeking to take unfair advantage of other REALTORS®.

At the hearing, it was brought out that REALTOR® A's properties had been listed with his real estate firm and processed through the MLS. He defended his advertising by asserting that it was no more than reasonable for him to seek the sale of houses in his subdivision through his own brokerage office to the greatest extent possible. He was not able to show the Hearing Panel any instances of reduced prices on direct sales even though several such sales had occurred.

It was the conclusion of the panel that REALTOR® A had violated Article 12. The panel's decision indicated that just because he engaged in home building he could not be exempted from the standards that apply to REALTORS® generally; and that the phrase "Buy Direct and Save" in his advertising was an attempt to convince prospective buyers that a lower price would be offered those purchasing direct rather than through cooperating brokers when, in fact, he had maintained the same prices and there was no saving by buying direct.

Case #12-7: REALTOR® Advertising Free Market Analysis (Reaffirmed Case #19-9 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also distributed certificates reading, "This will entitle the bearer of this certificate to one (1) FREE Market Analysis with no obligation to bearer." The certificate included the name of REALTOR® A and his firm.

A property owner complained about "being the victim of a come-on scheme" to solicit the listing of his property which the Grievance Committee referred for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing the property owner testified he had called REALTOR® A to have him prepare a market analysis of his residential property, ". . . with no obligation. . ." as claimed in REALTOR® A's ads. However, the property owner said that when REALTOR® A came to his home, he explained that he would be glad to provide the market analysis but said, "I presume you understand that when we provide this service, we also expect that if you list your property, you will permit us to serve you." The property owner testified that REALTOR® A did not press the matter at the time and did provide a market analysis. The property owner told the panel that for the next three weeks REALTOR® A or one of his representatives called "practically every single day" soliciting the listing of his home. The property owner testified that on several occasions, someone from REALTOR® A's office reminded him that REALTOR® A had provided a "valuable free service and we feel that you owe us the listing of the property."

REALTOR® A responded that he had provided the "free market analysis" as represented in his advertising, and had provided it ". . . with no obligation." He stated that he had neither asked for nor received a fee for the market analysis. He could not understand why he was required to appear before a Hearing Panel in connection with allegations of a violation of Article 12 of the Code of Ethics.

The Hearing Panel noted that offering premiums or prizes as inducements, or the advertising of anything described as "free" is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents other than a "true picture" as required by Article 12.

The Hearing Panel concluded that although REALTOR® A was free to advertise "free market analysis with no obligation," such a representation was not a "true picture" if all of the terms governing availability are not clearly disclosed in the ad or representation. The Hearing Panel noted that the statement by REALTOR® A when he provided the "free market analysis" that it was "presumed" the property owner would list with REALTOR® A if the property was offered for sale, and the subsequent "reminders" by sales representatives of REALTOR® A about the "expectation" made the representation less than a "true picture." The panel concluded that REALTOR® A was in violation of Article 12.

Case #12-8: REALTOR® or REALTOR-ASSOCIATE® to Disclose Status as Real Estate Broker or Salesperson Even When Advertising Property Owned by the REALTOR®

(Revised Case #19-11 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A decided to sell a residential investment property he owned in the city. He did not list the property with his firm, but rather advertised it for sale under the heading "For Sale By Owner," giving only his name and home telephone number. Mr. X responded to the ad, purchased the property, and took occupancy.

Shortly after moving into the property, Mr. X filed a complaint with the Board, alleging that REALTOR® A had violated Article 12 of the Code of Ethics by not disclosing that he was a real estate broker in his advertising or in negotiations for the property.

The Grievance Committee determined that the matter should be heard and referred it to the Professional Standards Committee for hearing. After following the Board's prescribed professional standards procedures, including proper notice to parties, a Hearing Panel was convened to hear the matter.

Mr. X testified that he had purchased the property without knowledge that REALTOR® A was a real estate broker. If he had known this, said Mr. X, he might have decided not to purchase the property or might have decided to have an independent appraisal of the property made before agreeing to purchase. In any event, he said, REALTOR® A's special knowledge and expertise placed him at a disadvantage.

REALTOR® A testified that the obligations imposed by Article 12 relate only to listed properties, where the REALTOR® acts as agent for the seller. He told the panel that he believed he had complied with the "true picture" test of Article 12 by advertising the property as a "For Sale By Owner," because it had not been listed with his firm and there was no agency relationship to disclose.

"Besides," explained REALTOR® A, "there was no need to disclose my licensure status in the advertisement, because my name is well known in the community as a real estate broker."

The Hearing Panel disagreed with REALTOR® A's reasoning and indicated in its decision that Article 12 as interpreted by Standard of Practice 12-6, does establish a requirement to disclose both ownership interest and licensure status when the REALTOR® advertises his own unlisted property for sale. Merely indicating REALTOR® A's name in the advertisement and assuming that his prominence in the real estate business was well known was not enough. The panel concluded that REALTOR® A was obliged to disclose his licensure status in the advertisement, since this knowledge might well have affected Mr. X's negotiations on the property as well as his eventual decision to purchase.

REALTOR® A was found in violation of Article 12 of the Code of Ethics.

Case #12-9: Unethical Advertising

(Originally Case #9-2. Revised and transferred to Article 19 as Case #19-12 May, 1988. Transferred to Article 12 November, 1994.)

REALTOR® A inserted an ad in the local newspaper soliciting $5,000 investments in a "sure thing." The ad explained that he was seeking only ten investors at $5,000 each; that each investor would receive $6,000 for his investment in 30 days; or, if he chose to invest for a longer period, could receive $8,000 in 90 days. The ad stated that REALTOR® A personally guaranteed this investment experience to the first ten investors who responded to the ad.

The President of REALTOR® A's Board saw the ad and was concerned. He requested the Board's Grievance Committee review the matter and determine if a hearing was warranted. The Grievance Committee asked REALTOR® A to demonstrate that he had put liquid assets in escrow to back up his published guarantee. REALTOR® A was at first evasive, and then explained that there was no possibility of any one losing any money as a result of his ad because he had simply been using ingenuity to develop a list of prospects interested in small real estate investments.

The Grievance Committee referred the matter to the Professional Standards Committee of the Board for a hearing, charging a violation of Article 12 of the Code of Ethics. In the subsequent hearing, REALTOR® A explained that he had told those who inquired that the opportunity was no longer available, but that he would take their names and addresses for future investment opportunities that might arise. He explained that in this case any guarantee he would make in a tangible transaction would, of course, be fully protected by liquid assets put in escrow.

The Hearing Panel concluded that REALTOR® A had not provided a "true picture" in his advertisement, and was in violation of Article 12.

Case #12-10: REALTOR® Advertising Free Market Analysis (Originally Case #9-21. Revised and transferred to Article 19 as Case #19-13 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also had certificates printed reading: "This will entitle the bearer to one FREE Comparative Market Analysis with no obligation." The certificate carried the name of REALTOR® A and his firm. REALTOR® B presented a written complaint to the Secretary of the Board filing a charge against REALTOR® A of an alleged violation of Article 12 of the Code of Ethics.

The matter was referred to the Grievance Committee which concluded the matter should be considered by a panel of the Professional Standards Committee. A hearing was convened with both REALTOR® A and REALTOR® B present.

REALTOR® A advised the Hearing Panel that he had placed the advertisements and provided the certificates in good faith. He stated he felt his ads did present a "true picture," and were not unethical. When the panel asked if his offering of a "free market analysis" was contingent upon his obtaining a listing or commission, REALTOR® A answered in the negative. He pointed out that he charged no fee for the service and provided it as represented on the certificates.

In the absence of any evidence indicating that the advertising by REALTOR® A was misleading, the Hearing Panel concluded that such advertising by REALTOR® A is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents less than a "true picture." However, if a charge is filed against a REALTOR® alleging violation of Article 12 and there is a hearing before the Professional Standards Committee, determination may properly be made of the truth of any representations made.

The Hearing Panel concluded that REALTOR® A had demonstrated that his ads presented a "true picture" and that he was not in violation of Article 12.

Case #12-11: Advertisements by Individuals Other Than the Listing Broker (Adopted as Case #19-14 May, 1988. Transferred to Article 12 November, 1994. Revised November, 1995 and November, 1996.)

REALTOR® A placed a full page ad in the Sunday supplement of his local newspaper. In the body of the ad were pictures of several homes and their addresses. At the top of the page was the following: "We've sold these—we can sell yours, too."

The following week three complaints were received from other Board Members alleging that REALTOR® A's ad was in violation of Article 12. Each of the complaints noted that REALTOR® A had participated in the transaction as the successful cooperating broker who had located the eventual purchasers, but the complaints also claimed that REALTOR® A's claim to have "sold" these properties was false and misleading since none of the properties had been listed with him and, in one instance, the sale had yet to close.

Since all the complaints involved the same advertisement, they were consolidated to be heard at the same hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® A defended his actions on the basis that although the properties had been listed with other brokers, he had been the "selling" or "cooperating" broker and was entitled to advertise his role in the transactions.

The Hearing Panel agreed with REALTOR® A's reasoning in their decision, pointing out that Article 12 as interpreted by Standard of Practice 12-7, provides that cooperating brokers (selling brokers) may claim to have "sold" the property and that such claims may be made by either the listing broker or the cooperating broker or by both of them upon acceptance of a purchase offer by the seller. The panel also noted that REALTOR® A could have shown that he had "participated in" or had "cooperated in" these transactions and also met his ethical obligations.

The panel's decision also indicated that during the existence of any listing, the cooperating broker's rights to advertise and market flow from the listing broker. However, claims of this nature were not advertisements of the properties but rather were advertisements of the broker's services. The only limitation on the ability of a cooperating broker to claim or to represent that a property had been "sold" was that the listing broker's consent would be required before a "sold" sign could physically be placed on the seller's property prior to closing.

Case #12-12: Advertising in the Guise of News (Adopted April, 1994. Revised November, 1995.)

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, several complaints were filed against REALTOR® B claiming that he had engaged in deceptive advertising in violation of Article 12's "true picture" directive. These complaints were reviewed by the Grievance Committee which determined that a hearing should be held and that all of the related complaints would be consolidated in a single hearing. The appropriate notices were sent and the hearing was convened.

REALTOR® A, one of the complainants, introduced REALTOR® B's "Homeowners Neighborhood Newsletter" into evidence pointing out that, on the first page, REALTOR® B had prominently shown pictures of, and addresses for, ten homes in an exclusive area of town labeling each as "Recently Sold." REALTOR® A, the listing broker for several of these properties, stated that, in his opinion, the average reader would readily conclude that REALTOR® B, by advertising this way, was claiming to have listed and sold the properties and that his claims violated Article 12, as interpreted by Standard of Practice 12-7. In response, REALTOR® B indicated that Article 12 was limited in scope to ". . . advertising and representations to the public" and that his "Homeowners Neighborhood Newsletter" was not, in fact, advertising but rather a well-intentioned effort to make homeowners aware of current market values. "Sale prices in our county become a matter of public record once a deed of sale is recorded," REALTOR® B argued, "and anyone who wants to find out about recent sales can get that information from the recorder's office." "All I am doing," he continued, "is reporting news—and saving residents the time and effort of retrieving this information on their own. If someone appreciates my efforts and later buys or sells through me, so much the better, but that is not the reason for my newsletter."

After hearing from the complainants and the respondent, and after reviewing the content of the newsletter, the Hearing Panel concluded that it did, in fact, violate Article 12 since, while the information regarding the properties themselves was accurate, its cumulative effect was to convey the impression that REALTOR® B had listed and/or sold the properties when he had not. The fact that he had been the cooperating broker in one of the transactions did not give him the right to claim, directly or indirectly, that he had "sold" any of the other properties because in no instance had he been the listing broker. The Hearing Panel did not accept REALTOR® B's claim that his newsletter was exempt from scrutiny under Article 12 in that he was disseminating news and not engaging in advertising. They noted that the name, address, and phone number of REALTOR® B's firm appeared prominently in several places; that a considerable portion of the newsletter was devoted to services available from REALTOR® B's firm and the advantages of doing business with REALTOR® B; and concluded that while the newsletter might, in fact, include an element of "news" a primary purpose of it was to advertise REALTOR® B and his firm and, consequently, that it was subject to scrutiny under Article 12.

Case #12-13: Advertising Including Information Based on Other Brokers' Transactions (Adopted November, 1994. Revised November, 1997.)

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, a complaint was filed against REALTOR® B alleging he had engaged in deceptive advertising in violation of Article 12's "true picture" mandate. The complaint was reviewed by the Grievance Committee which determined that a hearing should be held. Appropriate notices were sent and a hearing was convened.

REALTOR® A, the complainant, provided panel members with copies of REALTOR® B's "Homeowners Neighborhood Newsletter" noting that REALTOR® B had compiled a list of 20 homes in an exclusive area of town, titling the list "Recently Sold." REALTOR® A, the listing broker for two of those properties, stated that he believed that readers could conclude that REALTOR® B, in advertising this way, had constructively claimed to have listed and sold all of the properties on the list and that such claims violated Article 12.

In his defense, REALTOR® B acknowledged that his "Homeowners Neighborhood Newsletter" was, in fact, primarily an advertising vehicle and that it did not have a regular publication schedule. While it included news and information, including tips on how to make residential property more readily saleable and information regarding products and services offered by REALTOR® B's firm, its primary purpose was to generate business for REALTOR® B's firm.

REALTOR® B defended inclusion of the "Recently Sold" list, pointing out that all of the properties on the list were the subject of recent sales transactions; that the period of time during which the transactions had closed was clearly stated; that the fact that the information was taken from the local MLS compilation of historical data had been duly noted; that a footnote at the bottom of the page clearly indicated that the properties on the list had been listed and sold by various Participants in the MLS; and that such use was consistent with the local MLS rules and regulations.

The Hearing Panel accepted REALTOR® B's defense, holding that reasonable readers would conclude that most newsletters were, in reality, promotional advertising pieces and, in any case, that REALTOR B's newsletter had included some items of "news". Moreover, they noted that if REALTOR® B had simply listed the 20 transactions, titling them as "recently sold" and had done nothing more, then a reasonable reader might have concluded that he was claiming to have listed and sold those properties. However, since REALTOR® B had included a footnote pointing out that the properties on the list had been listed and sold by various Participants in the MLS, the fact that REALTOR® B had not included the names of each listing broker could not be construed as REALTOR® B claiming to have been the listing broker in each instance or to have "sold" each of the properties.

Case #12-14: Advertising Property as "Offered Exclusively" (Adopted November, 1995.)

REALTOR® B, an exclusive buyer agent, filed an ethics complaint against REALTOR® A claiming that her "for sale" signs violated Article 12's call for ". . . a true picture in advertising and . . . representations to the public."

At the hearing, REALTOR® B elaborated on the charge in her opening statement. "REALTOR® A's 'for sale' signs often include the words 'Offered Exclusively' on a rider attached to them," she said, "and buyers are misled into believing that they can only purchase these properties by dealing with REALTOR® A or one of her associates. Advertising like that is unfair to other brokers who are trying to cooperate in the sale of her listings."

REALTOR® A responded expressing her belief that while there might be a rare exception, most potential home purchasers were sufficiently sophisticated to realize that regardless of their wording, "for sale" signs were just that, announcements that property was on the market and that they could generally deal with any real estate broker that they chose. "Everybody realizes how MLS works and that we all cooperate with each other on almost all of our sales. My use of 'offered exclusively' or 'exclusively with' or 'exclusively by' or just plain 'exclusively' like other brokers use doesn't mislead anyone. And, as a practical matter, I do have an exclusive right to sell listing, and I am the seller's exclusive agent, each and every time I put one of those signs on listed property so I have to believe that I am meeting Article 12's 'true picture' test."

Agreeing with REALTOR® A's reasoning, the Hearing Panel concluded that she had not violated Article 12.

Case #12-15: Links to other Internet Sites (Adopted April, 1998.)

Noting the increasing numbers of people using the Internet, REALTOR® A decided to have a website designed. She hired a consultant and proceeded to plan her site and its contents. Realizing that her website might be enhanced by providing a link to all the local listings on REALTOR.org, she decided to have her website designed to provide such a link.

A few months later, REALTOR® B, a competing broker in the same community, was surfing the web and happened upon REALTOR® A's new website. Upon exploring it, he discovered the link to REALTOR.org which included REALTOR® B's listings.

REALTOR® B immediately filed an ethics complaint with the local Board of REALTORS alleging that REALTOR® A had violated Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4. Following review by the Board's Grievance Committee, the complaint was scheduled for a hearing before a Hearing Panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B argued that by providing a link to the listings on REALTOR.org, REALTOR® A was advertising without authority all the listings in the local MLS on her Internet website.

REALTOR® A countered saying that in the culture of the Internet, it is well established that links are merely a method of "pointing" or "referring" to another site; that the information had not been altered nor had any information been deleted; and that people who view Internet websites understand that. She went on to analogize what she had done to distributing copies of the local homes magazine. Even though the magazine contained ads promoting other REALTORS®' listings, by delivering that information to prospective buyers, she was not advertising their listings.

After hearing all relevant testimony, the Hearing Panel went into executive session and concluded that by linking to an Internet website which contained the ads of other REALTORS® listings, REALTOR® A had not engaged in unauthorized advertising and had not violated Article 12.

Case #12-16, Copying and Publishing other Brokers' Advertisements (Adopted April, 1998.)

Wanting to take advantage of the virtual explosion of the World Wide Web, REALTOR® A, who had a respectable level of expertise in computer technology, decided to purchase a website design software package and set out to design his own website.

Understanding that his site would be greatly enhanced by providing as much information as possible, he decided he would offer two pages of listings; his own and some choice listings of his competitors. Being careful not to present a misleading picture in his advertising, he was very careful to list the company name and phone number of the listing company with each ad of his competitors' listings.

When REALTOR® B found one of her listings on REALTOR® A's new website, she filed an ethics complaint with the local Association of REALTORS® complaining that REALTOR® A had "blatantly and without authorization of any kind whatsoever advertised my listing on his Internet website and in so doing was clearly in violation of Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4."

The matter was placed on the agenda of the Grievance Committee. At their next meeting, the Grievance Committee decided that the alleged conduct, if taken at face value, could possibly violate Article 12 and directed the Association's Executive Officer to schedule an ethics hearing before a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B produced a printed copy of the advertisement of her listing which had been placed on REALTOR® A's website. She produced a copy of her listing agreement and a photograph of the property, which matched the information in the ad. She testified that she had never been contacted by REALTOR® A for permission to advertise her listing.

When REALTOR® A presented his case, he showed the hearing panel several examples of REALTORS® providing links to sites with ads for other REALTORS®' listings. He said he saw no fundamental difference between providing such links and actually advertising other listings on his website, especially when he was very careful to also give the listing company's name and phone number. He went on to argue that REALTOR® B's clients would be hard pressed to understand REALTOR B's objection to giving their properties the additional exposure they received on REALTOR® A's website.

Upon the conclusion of all testimony and closing statements, the Hearing Panel met in executive session and decided that while providing a link to listings of other REALTORS® did not violate Article 12, by actually publishing REALTOR® B's listing on his website REALTOR® A was not linking, but instead was advertising (by copying, as opposed to simply providing a link) without authority. In their findings of fact, the Hearing Panel also noted that even if REALTOR® B's clients might not object to such advertising, the lack of objection could not be assumed and would not relieve REALTOR® A of the obligation to obtain REALTOR® B's specific authority and consent to advertise her listings.

The Hearing Panel found REALTOR® A in violation of Article 12 of the Code of Ethics.

Case #12-17: Use of Deceptive Domain Name/URL ("Uniform Resource Locator")

(Adopted May, 2001.)

REALTOR® X, a principal broker in the firm XYZ, was technologically savvy and constantly looking for ways to use the Internet to promote his firm and drive additional traffic to his website.

Being an early adapter to the Internet, he had registered, but not used, domain names that incorporated or played on the names of many of his competitors and their firms, including ABC, REALTORS®.

REALTOR® X and his information technology staff concluded that one way to drive traffic to the firm's website would be to take advantage of the search engines commonly used by potential buyers and sellers. They realized that when potential buyers or sellers searched on key words like "real estate" or "REALTORS®" or on similar words, lists of domain names would appear, and that when consumers searched the Internet for ABC, REALTORS®, one of the domain names that might appear would be REALTOR® X's domain name, abcrealtors.com.

REALTOR® X decided to take advantage of the domain names that he had previously registered, and pointed several that used, in various ways, the names of his competitors, including "abcrealtors.com," to his site.

In a matter of days, REALTOR® X learned that he had been charged with a violation of Article 12 of the Code of Ethics by REALTOR® A, the owner of ABC, REALTORS® , alleging that his (REALTOR® X's) use of the domain name "abcrealtors.com" presented a false picture to potential buyers and sellers and others on the Internet.

At the hearing, REALTOR® X defended himself indicating that, in his opinion, use of a domain name was not advertising or a "representation" to the public but simply a convenient way for Internet users to find relevant websites. Moreover, "When web surfers reach my home page, there is no question that it is my site since I clearly show XYZ's name and our status as REALTORS®," he continued. "These complaints are just a lot of sour grapes from dinosaurs who aren't keeping up and who don't realize that on the Internet it's 'every man for himself.' "

The Hearing Panel disagreed with REALTOR® X's justification, indicating that while his use of a domain name that employed another firm's name might not be precluded by law or regulation, it did not comply with the Code's higher duty to present a "true picture."

REALTOR® X was found in violation of Article 12, presenting an untrue picture in his representation to the public.

Case #12-18: Protecting Client's Interest in Auction Advertised as "Absolute" (Adopted May, 2005. Cross-referenced with Case #1-31.)

Seller T, a widowed elementary school teacher in the Midwest inherited a choice parcel of waterfront property on one of the Hawaiian islands from a distant relative. Having limited financial resources, and her children's' college educations to pay for, she concluded that she would likely never have the means to build on or otherwise enjoy the property. Consequently, she decided to sell it and use the proceeds to pay tuition and fund her retirement.

Seller T corresponded via the Internet with several real estate brokers, including REALTOR® Q whose website prominently featured his real estate auction services. An exchange of email followed. REALTOR® Q proposed an absolute auction as the best way of attracting qualified buyers and ensuring the highest possible price for Seller T. Seller T found the concept had certain appeal but she also had reservations. "How do I know the property will sell for a good price?" she e-mailed REALTOR® Q. REALTOR® Q responded "You have a choice piece of beachfront. They aren't making any more of that, you know. It will easily bring at least a million five hundred thousand dollars." Seller T acquiesced and REALTOR® Q sent her the necessary contracts which Seller T executed and returned.

Several days prior to the scheduled auction, Seller T decided to take her children to Hawaii on vacation. The trip would also afford her the chance to view the auction and see, firsthand, her future financial security being realized.

On the morning of the auction only a handful of people were present. Seller T chatted with them and, in casual conversation, learned that the only two potential bidders felt the property would likely sell for far less than the $1,500,000 REALTOR® Q had assured her it would bring. One potential buyer disclosed he planned to bid no more than $250,000. The other buyer wouldn't disclose an exact limit but said he was expecting a "fire sale."

Seller T panicked. She rushed to REALTOR® Q seeking reassurance that her property would sell for $1,500,000. REALTOR® Q responded, "This is an auction. The high bidder gets the property." Faced with this dire prospect, Seller T insisted that the auction be cancelled. REALTOR® Q reluctantly agreed and advised the sparse audience that the seller had cancelled the auction.

Within days, two ethics complaints were filed against REALTOR® Q. Seller T's complaint alleged that REALTOR® Q had misled her by repeatedly assuring her—essentially guaranteeing her—that her property would sell for at least $1,500,000. By convincing her she would realize that price—and by not clearly explaining that if the auction had proceeded the high bidder—at whatever price—would take the property, Seller T claimed her interests had not been adequately protected, and she had been lied to. This, Seller T concluded, violated Article 1.

The second complaint, from Buyer B, related to REALTOR® Q's pre-auction advertising. REALTOR® Q's ad specifically stated "Absolute Auction on July 1." Nowhere in the ad did it mention that the auction could be cancelled or the property sold beforehand. "I came to bid at an auction," wrote Buyer B, "and there was no auction nor any mention that it could be cancelled." This advertising, Buyer B's complaint concluded, violated Article 12's "true picture" requirement.

Both complaints were forwarded by the Grievance Committee for hearing. At the hearing, REALTOR® Q defended his actions by noting that comparable sales supported his conclusion that Seller T's property was worth $1,500,000. "That price was reasonable and realistic when we entered the auction contract, and it's still reasonable today. I never used the word 'guarantee;' rather I told her the chances of getting a bid of $1,500,000 or more were very good." "But everyone knows," he added, "that anything can happen at an auction." If Seller T was concerned about realizing a minimum net return from the sale, she could have asked that a reserve price be established.

Turning to Buyer B's claim of deceptive advertising, REALTOR® Q argued that his ad had been clear and accurate. There was, he stated, an auction scheduled for July 1 and it was intended to be an absolute auction. "The fact that it was advertised as 'absolute' doesn't mean the property can't be sold beforehand—or that the seller can choose not to sell and cancel the auction. Ads can't discuss every possibility. It might have rained that day. Should my ad have cautioned bidders to bring umbrellas?" he asked rhetorically.

The Hearing Panel concluded that while REALTOR® Q had not expressly guaranteed Seller T her property would sell for $1,500,000, his statements had led her to that conclusion and after realizing Seller T was under that impression, REALTOR® Q had done nothing to disabuse her of that misperception. Moreover, REALTOR® Q had taken no steps to explain the auction process to Seller T, including making her aware that at an absolute auction the high bidder—regardless of the bid—would take the property. REALTOR® Q's actions and statements had clearly not protected his client's interests and, in the opinion of the Hearing Panel, violated Article 1.

Turning to the ad, the Hearing Panel agreed with REALTOR® Q's position. There had been an absolute auction scheduled—as REALTOR® Q had advertised—and there was no question but that REALTOR® Q had no choice but to cancel the auction when he had been instructed to do so by his client. Consequently, the panel concluded REALTOR® Q had not violated Article 12.

Case #12-19: Remove Information About Listings from Websites Once Authority to Advertise Ends (Adopted November, 2006)

REALTOR® A, a residential specialist in a major metropolitan area, spent several weeks each year in a cabin in the north woods he had inherited from a distant relative. Always on the lookout for investment opportunities, he paid careful attention to "for sale" signs, newspaper ads, and local brokerage websites in the area.

Returning from the golf course one afternoon, REALTOR® A spotted a dilapidated "for sale" sign on an otherwise-attractive wooded lot. Getting out of his car, he was able to discern REALTOR® Z's name. Returning to his cabin, he used the Internet to locate REALTOR® Z and REALTOR® Z's company website. Visiting REALTOR® Z's website, he found detailed information about the lot he'd seen that afternoon. Using REALTOR® Z's e-mail address function, he asked for information about the lot, including its dimensions and asking price. Several days later REALTOR® Z responded, advising simply, "That listing expired."

The following day REALTOR® A, hoping to learn whether the lot was still available, contacted REALTOR® X, another area real estate broker. "As it turns out, we have an exclusive listing on the property you're interested in," said REALTOR® X. In response to REALTOR® A's questions, REALTOR® X advised that he had had an exclusive listing on the property for almost six months. "That's funny," responded REALTOR® A, "REALTOR® Z has a 'for sale' sign on the property and information about it on her website. Looking at her website, I got the clear impression that she still had that property listed."

While the wooded lot proved to be out of REALTOR® A's price range, REALTOR® Z's "for sale" sign and website were still on his mind when he returned home. Ultimately, he contacted the local association of REALTORS® and filed an ethics complaint alleging that REALTOR® Z's "for sale" sign, coupled with her offering information on her website made it appear as if the wooded parcel was still listed with her firm, when that had not been the case for over six months. REALTOR® A noted that this conduct, in his opinion, violated Article 12 since REALTOR® Z was not presenting a "true picture" in her public representations and was, in fact, advertising without authority, a practice prohibited by Article 12, as interpreted by Standard of Practice 12-4.

At the hearing, REALTOR® Z claimed that failure to remove the "for sale" sign was simply an oversight, and if anyone was to blame, it was her personal assistant who was responsible for removing signs and lockboxes from expired and sold listings. "If you want to blame anyone, blame my assistant since he's supposed to bring back our 'for sale' and 'sold' signs." Turning to the stale listing information on her website, REALTOR® Z acknowledged that information about her former listing had continued to appear for more than six months after the listing had expired. REALTOR® Z analogized the continued presence of that information to an old newspaper advertisement. "It's possible someone might come across a six month old newspaper with my listings in it. Those ads were true when I ran them but how could I ever control when and where someone will come across them, possibly months or even years later?" she asked. "Besides," she added, "REALTORS® have better things to do than constantly inspect their websites to make sure everything is absolutely, positively up-to-the-minute." "If we did that, none of us would have time to list or sell," she concluded.

The hearing panel disagreed with REALTOR® Z's reasoning. While reasonable consumers can expect newspaper advertisements to be current and accurate on the date of publication, they also understand that information in months or even years old newspapers will be obsolete. Information on REALTORS®' websites is clearly different from newspaper ads since it can be updated on a regular basis, and corrected if mistakes occur. The panel concluded that the continued presence of information about REALTOR® Z's former listing six months after expiration on her website, coupled with the continued presence of her "for sale" sign on the wooded lot, did not present the true picture required by Article 12, and was inconsistent with the obligation to have authority to advertise contemplated by Article 12 as interpreted by Standard of Practice 12-4. REALTOR® Z was found in violation of Article 12.

Case #12-20: Misleading Use of "MLS" in URL

(Adopted November, 2007. Revised May 2008.)

REALTOR® A, a residential broker in a major metropolitan city, spent several weeks each year in his cabin in the north woods where he planned to retire one day. Even while at home in the city, REALTOR® A stayed abreast of local news, events, and especially the local real estate market by subscribing to the print and on-line editions of the local newspaper. He also bookmarked a number of north woods brokers' websites to stay current with the market and to watch for potential investment opportunities.

One evening while surfing the Internet, he came across a URL he was unfamiliar with—northwoodsandlakesmls.com. REALTOR® A was pleased to see the MLS serving the area where he vacationed for so many years had created a publicly-accessible website. Clicking on the link, he was surprised to find that the website he was connected with was not an MLS's website but instead was REALTOR® Z's company website. Having had prior dealings with REALTOR® Z, REALTOR® A spent some time carefully scrutinizing the website. He noted, among other things, that the name of REALTOR® Z's firm did not include the letters MLS.

REALTOR® A sent an e-mail to the association's executive officer asking whether REALTOR® Z had been authorized by the association to use the URL northwoodsandlakesmls.com and whether the association felt it presented a true picture as required by Article 12 of the Code of Ethics. The association executive responded that their association did not assign, review, or approve URLs used by their members, but added that if REALTOR® A felt a possible violation of the Code of Ethics had occurred, the appropriate step was to file an ethics complaint. REALTOR® A did just that, alleging in his complaint that when he clicked on what appeared to be a real estate-related URL that included the letters "MLS" he expected to be connected with a website operated by a multiple listing service. He stated he felt that REALTOR® Z's URL was deceptive and did not meet Article 12's true picture test.

At the hearing, REALTOR® Z defended his URL on a number of grounds including the fact that he was a participant in good standing in the MLS and that he was authorized under the MLS's rules to display other participants' listings on his website. "If I used 'MLS' in the name of my firm, I could see how that might be perceived as something less than a true picture," he argued, "but by simply using MLS in my URL I am telling consumers that they can get MLS-provided information about properties in the north woods from me. What could be truer than that?"

The hearing panel disagreed with REALTOR® Z's reasoning. While REALTOR® Z's website included information about other participants' listings that the MLS had provided—and that REALTOR® Z was authorized to display—the fact remained that a real estate-related URL that includes the letters MLS will, in many cases, lead reasonable consumers to conclude that the website is an MLS's, and not a broker's website. That was the case with REALTOR® Z's URL and REALTOR® Z was found in violation of Article 12 as interpreted by Standard of Practice 12-10.

Case #12-21: Registration of URL Similar to Name of Subsequently-Established Firm

(Adopted November, 2008.)

REALTOR® Z was the technology-savvy partner in the XYZ residential real estate firm in the north woods. She was also a former advertising executive who was constantly looking at new and innovative ways to position and market the XYZ firm. While her partners had consistently resisted her suggestions to change the firm's name to better reflect the locale they served, REALTOR® Z had, with their concurrence, registered a number of domain names based on firm names she had to date been unable to convince her partners to adopt. She felt this was a wise strategy since it was only a matter of time until she would convince her partners that a name change was beneficial. Among the domain names registered were northwoodsrealestate.com, woodsandlakesrealty.com, and upnorthrealestate.com. None of those names were, to the best of REALTOR® Z's knowledge, similar to the names of other area real estate brokerage companies.

Approximately a year later Sales Associate B received his broker's license, left the XYZ firm, and opened his own brokerage firm which he named Up North Real Estate. When he attempted to register the domain name upnorthrealestate.com he learned it had already been registered by REALTOR® Z. Upset with this turn of events, he filed an ethics complaints with the local association of REALTORS® charging REALTOR® Z and her partners with having violated Article 12 of the Code of Ethics, as interpreted by Standard of Practice 12-12.

At the hearing, REALTOR® Z defended her actions in registering the domain name upnorthrealestate.com on the grounds she had been actively lobbying her partners to change the firm's name to Up North Real Estate; that she had no intention of using the domain name upnorthrealestate.com until the firm's name was changed and that at the time she had registered the domain name no other firm that she was aware of had a similar, let alone identical, name. Moreover, she argued, a domain name does not have to mirror a firm's name, it merely has to present a "true picture." "The XYZ firm has listed and sold residential property in the north woods for many years. 'Up north' is traditionally used by residents and visitors to refer to our area," she continued. "While I hoped to convince my partners to change the name of our firm to 'Up North Real Estate' at some point, if the XYZ firm had used the domain name—which we haven't—it still would have satisfied Article 12's true picture requirement since it refers to a particular geographic locale, not to a competing real estate company."

The hearing panel agreed with REALTOR® Z's reasoning, concluding that at the time REALTOR® Z registered the domain name upnorthrealestate.com, it was not similar to the name of any other area real estate company. The panel also noted that if it had been used, the domain name would have satisfied Article 12's true picture requirement since it would have simply suggested to consumers that it was a source of property information in that geographic area.

Case #12-22: Registration of Domain Names Based on Competitors' Firms' Names (Adopted November, 2008.)

REALTOR® X was the principal broker of a small but growing real estate brokerage firm. REALTOR® X was constantly on the lookout for new and innovative ways to distinguish her firm from the competition and to increase its market share. Rather than simply relying on tried and true methods, REALTOR® X sought and often followed the advice of education, marketing and technology consultants.

Based on the advice of her technology expert, REALTOR® X created and registered domain names for her firm, for the licensees affiliated with her, and for herself. A somewhat more troubling recommendation was that she register domain names mirroring the names of the real estate brokerage firms in her area with the largest market shares. When she questioned the consultant, he responded, "There's no reason why not. Everyone does it. It's just competition—and aggressive marketing."

When REALTOR® A tried to register a domain name for his firm ABC REALTORS®, he learned that domain name had already been registered by REALTOR® X. Doing further research, he learned the names of several other large companies in the area had also been registered as domain names by REALTOR® X. REALTOR® A filed an ethics complaint with the local association of REALTORS® charging REALTOR® X with violating Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-12.

At the hearing, REALTOR® X defended her actions noting that Article 12 requires REALTORS® to "present a true picture in their advertising, marketing, and other representations." She pointed out that she had never used the registered domain name mirroring the name of REALTOR® A's firm, or those based on the names of other local firms. Since she had not used the domain names, she couldn't see how she had violated Article 12.

The hearing panel did not agree with REALTOR® X's reasoning. The panel based its decision that REALTOR® X had violated Article 12 on the wording of Standard of Practice 12-12 which bars REALTORS® from registering URLs or domain names which, if used, would present less than a true picture. The panel also noted that the very act of registering a URL or domain name which, if used, would present an untrue picture is all that is required to violate Article 12, as interpreted by Standard of Practice 12-12.

Case #12-23: Intentionally Misspelled Domain Names Based on Names of Competitors' Firms. (Adopted November, 2008.)

REALTOR® V was the sole proprietor of a property management firm. REALTOR® V hoped to expand into residential brokerage and concluded that attracting buyers and sellers to his website would enhance the growth of his firm's brokerage activity. REALTOR® V sought the advice of several website developers, each of whom had suggestions on how best to attract and hold visitors. One suggestion REALTOR® V found particularly interesting was to create domain names similar, but not identical, to the names of established brokerage firms in the area. REALTOR® V registered and began to use domain names that, while similar to the names of the five largest residential brokerage firms in the area, were each spelled slightly differently than those firms' actual names.

In short order, complaints were filed against REALTOR® V by REALTORS® from each of the five largest firms. The grievance committee concluded the complaints were related and consolidated them for consideration at one ethics hearing.

At the hearing, REALTOR® V acknowledged that Article 12 requires REALTORS® to be "honest and truthful in their real estate communications" and that REALTORS® must "present a true picture in their advertising, marketing, and other representations." "If I had used the actual names of any of these firms in my domain names, that would have been a misrepresentation," continued REALTOR® V, "but when I changed spellings, I constructively created meaningless domain names which aren't deceptive since they don't reflect the name of any actual real estate firm." The hearing panel did not agree with REALTOR® V's defense, finding that each of the "slightly misspelled" domain names were so similar to the names of REALTOR® V's competitors that reasonable consumers would readily conclude they would lead consumers to those firms' respective websites. As REALTOR® V's "misspelled" domain names would mislead reasonable consumers, REALTOR® V was found in violation of Article 12, as interpreted by Standard of Practice 12-12.

Case #12-24: Registration of Domain Name Based on Sales Associate's Name When Sales Associate Subsequently Leaves the Firm (Adopted November, 2008.)

REALTOR® P was the current broker-owner of the real estate brokerage firm founded by her grandmother. Always on the lookout for ways to attract top sales associates, REALTOR® P offered comprehensive training and benefits, including state of the art technology tools, individual websites, and personalized domain names for each sales associate.

Sales Associate Q had enjoyed a long and productive relationship with REALTOR® P's firm but, having gained considerable experience and a broad client base, decided the time had come to start his own firm. The parting was amicable except for one thing—Sales Associate Q's domain name which, under the terms of his independent contractor agreement, remained the property of the firm. Attempts to negotiate a release of the domain name proved unsuccessful and, with no alternative available, Sales Associate Q filed an ethics complaint against REALTOR® P, alleging violation of Article 12 as interpreted by Standard of Practice 12-12. Sales Associate Q's complaint noted that the domain name included Q's first and last names and that any future use by REALTOR® P, now that Q was no longer a member of her firm, would present something less than the true picture required by Article 12.

At the hearing, REALTOR® P defended refusal to release the domain name on the grounds that at the time she had registered it, Sales Associate Q had, in fact, been a member of her firm, and that use of the domain name by a member of her firm had presented a true picture. Circumstances change, she noted, adding that at the time she had registered the domain name on behalf of both her firm and Sales Associate Q, her actions had been consistent with Article 12 as interpreted by Standard of Practice 12-12. "The fact that Sales Associate Q decided to start his own firm shouldn't result in me being found in violation of the Code of Ethics," she concluded.

The hearing panel concluded that REALTOR® P was not in violation of Article 12 as interpreted by Standard of Practice 12-12 because her registration of a domain name that used Sales Associate Q's name occurred with the knowledge and consent of Sales Associate Q; at the time of registration, use by REALTOR® P's firm satisfied Article 12's true picture requirement; and that REALTOR® P had ceased any use of the domain name at the time Sales Associate Q left the firm. The decision also noted that while the Code of Ethics did not require REALTOR® P to transfer the domain name to Sales Associate Q, domain name registrations must be renewed periodically and that a future renewal of the domain name by REALTOR® P would be a violation of Article 12 if that domain name does not reflect a "true picture" of REALTOR® P's business at the time of the renewal.

Case #12-25: Advertising Role in Sales After Changing Firm Affiliation (Adopted May, 2009)

REALTOR® Q was a non-principal broker licensed with ABC REALTORS®. REALTOR® Q specialized in buyer representation. A prominent feature on her website carried the headline, "I sold these—and I can help you buy or sell, too!" Under the headline was a list of over a hundred street addresses of properties for which REALTOR® Q had found buyers.

For personal and professional reasons, REALTOR® Q chose to leave the ABC firm to affiliate with XYZ, REALTORS®. As she transitioned to her new firm, REALTOR® Q was careful to disclose the name of her new firm in a readily apparent manner on her website. Her website also continued to display the list of properties she had found buyers for during her time with the ABC firm.

REALTOR® Q's parting with ABC had been amicable, so she was surprised to receive a complaint brought by her former principal broker, REALTOR® C, alleging a violation of Article 12, as interpreted by Standard of Practice 12-7, based on her website's display of sales made while REALTOR® Q had been affiliated with ABC.

At the hearing, REALTOR® C, the complainant, noted that Standard of Practice 12-7 provides, in part, "Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have 'sold' the property. "It was ABC, REALTORS®," REALTOR® C added, "that was the selling broker in these transactions, not our former sales associate REALTOR® Q. Her advertising our sales under the umbrella of her new firm, XYZ, REALTORS®, is confusing at best, and potentially misleading to consumers who may get the impression the XYZ firm was involved in these transactions when that's not the case."

REALTOR® Q defended herself and her website, arguing that the fact that she had found the buyers for each of the properties listed on her website was still true, and that the only thing that had changed was her firm affiliation. "If it was true when I was licensed with ABC, then it's still true even though I'm now licensed with XYZ," she reasoned.

The hearing panel agreed that REALTOR® Q had, in fact, sold the properties, albeit while licensed with ABC. The ad, however, suggested that the sales were made while REALTOR® Q was licensed with XYZ, which was not the case. Consequently, REALTOR® Q was found in violation of Article 12.

Case #12-26: Advertising Role in Sales After Changing Firm Affiliation (Adopted May, 2010)

REALTOR® P was a non-principal broker licensed with XYZ, REALTORS® whose forte was listing residential property. Noted prominently on REALTOR® P's website was the banner: "Sold by REALTOR® P!" Under that banner were addresses of nearly a hundred properties REALTOR® P had listed, and which had been sold either through REALTOR® P's efforts or through the efforts of cooperating brokers.

Seeking new opportunities, REALTOR® P ended his relationship with XYZ and affiliated with ABC, REALTORS®. REALTOR® P promptly revised the information on his website to prominently display the name of his new firm in a readily apparent manner. He also continued to display the lengthy list of properties that he had listed, and which had sold, while REALTOR® P was affiliated with XYZ.

His departure from XYZ had been on good terms, so REALTOR® P was taken aback to receive a complaint brought by his former principal broker, REALTOR® D, alleging that REALTOR® P's website display of sold listings violated Article 12, as interpreted by Standard of Practice 12-7.

At the hearing, the complainant noted that Standard of Practice 12-7 provides, in relevant part, "Only REALTORS® who participated in the transaction as a listing broker or cooperating broker (selling broker) may claim to have 'sold' the property." "It was XYZ, REALTORS®," REALTOR® D added, "that was the listing broker in these transactions, not our former sales associate, REALTOR® P. His advertising of our listings and sales under the banner of his new firm ABC, REALTORS®, is unauthorized and misleading to consumers who will get the impression that ABC was involved in these transactions when that is simply not true."

REALTOR® P defended himself and his website pointing out that he had listed each of the properties displayed on his website, and the only thing that had changed was his firm affiliation. He directed the hearing panel's attention to the disclaimer at the end of the list of properties that read, "Each of these properties was listed by REALTOR® P over the past seven years. For much of that time, I was affiliated with another firm."

The hearing panel agreed with REALTOR® P's defense, noting that consumers would understand that some of the sales had occurred while REALTOR® P was affiliated with a different firm. Consequently, REALTOR® P was found not in violation of Article 12.