

## CASE INTERPRETATIONS RELATED TO ARTICLE 13:

### Case #13-1: Preparation of Instrument Unrelated to Real Estate Transaction

(Reaffirmed Case #17-1 May, 1988. Transferred to Article 13 November, 1994. Revised November, 2001.)

Client A dropped in to see his friend, REALTOR® B, who had recently provided professional services to Client A's company. Client A said the company was sending him on business to the Far East; that the trip would involve a good deal of air travel in remote areas; and that he would like to leave a power of attorney with his wife while he was gone "just in case." He asked REALTOR® B if he would prepare a power of attorney for him and REALTOR® B said, "It's a simple document. I'll be glad to prepare one for you," and did.

This action came to the attention of the Grievance Committee of the Board of REALTORS®, which, after review, filed a complaint with the Board's Professional Standards Committee, charging REALTOR® B with a violation of Article 13 of the Code of Ethics.

REALTOR® B's defense was that he understood Client A's request to be essentially for a real estate service since from his general knowledge of Client A's personal affairs, he knew that Client A could have no reason for giving his wife a power of attorney except to put her in a position to act in real estate transactions. He contended that because his preparation of a legal document was directly related to real estate matters, he had rendered real estate, not legal, services to Client A.

It was the judgment of the Hearing Panel that REALTOR® B's defense was without merit; that by preparing the power of attorney, he had engaged in the practice of law in violation of Article 13 of the Code.

### Case #13-2: Use of Standard Purchase Contract Form (Reaffirmed Case #17-2 May, 1988. Transferred to Article 13 November, 1994.)

REALTOR® A, as the exclusive agent of Seller B, sold a small commercial property to Buyer C, filling in the blanks in a standard purchase contract form. At the time REALTOR® A presented the contract for Buyer C's signature, he explained that the contract was prepared by attorneys and was commonly used in the area. He suggested that Buyer C have his attorney review it. Buyer C said he would read it over carefully, and if he had any questions he would consult an attorney about it. He subsequently signed the contract, saying it was clear and satisfactory to him.

At the closing, Buyer C professed to have been under some misunderstanding as to language in the contract regarding the date of possession of the property, and following the closing Seller B complained to the Board of REALTORS® that he had been greatly embarrassed by this circumstance at the closing and felt that REALTOR® A was at fault in preparing a contract without having an attorney participate in the drafting.

At the hearing, REALTOR® A reiterated the points that had been made in his written response to the complaint: that the contract he had used was the standard form, prepared by an attorney; that in keeping with Article 13 he had recommended that the buyer have the contract reviewed by his own attorney; and that no other parties present at the closing had found any lack of clarity in the clause in question.

The Hearing Panel concluded that REALTOR® A had acted in conformance with the Code; that he had not undertaken to practice law; and that he was not in violation of Article 13.

**Case #13-3: REALTOR®'s Obligation to Recommend Counsel When Needed**

(Reaffirmed Case #17-3 May, 1988. Transferred to Article 13 November, 1994.)

REALTOR® A was the listing broker for 25 acres of land owned by Client B. Shortly after REALTOR® A's sign was placed upon the property, Customer C called REALTOR® A and expressed interest in purchasing the property. After inspecting the property, Customer C made a full price offer. Surprised, Client B prepared a counter-offer at a higher price. REALTOR® A realized that he might have a legal claim for commission from Client B, but not wishing to jeopardize their relationship, agreed that he would go back to Customer C and attempt to negotiate a higher price. Upon being informed of the property owner's change of mind and his requested higher price for the property, Customer C became upset and indicated his intent to consult his attorney to determine if he could force the seller to go through with the sales transaction at the price for which it had been originally offered. At this point REALTOR® A advised Customer C that, in his opinion, litigation would be lengthy and expensive and that in the final analysis the sale could not be enforced. On the basis of REALTOR® A's advice Customer C agreed to the higher price, and the transaction was consummated. Shortly after, Customer C complained to the Board of REALTORS® that REALTOR® A had provided bad advice to him. The Secretary referred the complaint to the Grievance Committee which determined that a hearing should be held and referred the matter back to the Secretary to arrange such a hearing.

At the hearing, Customer C outlined his complaint to the Hearing Panel of the Professional Standards Committee. He indicated that he had intended to consult his attorney, however, because of the persuasive personality of REALTOR® A and REALTOR® A's assurance that legal action would be an exercise in futility, he had not done so.

REALTOR® A advised the panel that he had told Customer C that he could consult his attorney, but that, in his opinion, it would be a waste of time. He defended what he had told Customer C stating that it was only his opinion, not intended as a conclusive statement of law, and, in fact, was a correct statement under the law of the state. The panel concluded that REALTOR® A, in pointing out the fact that legal action was likely to be time consuming and expensive, was stating a practical circumstance which Customer C should consider and was proper. The panel further concluded that the expression of an opinion as to the probable outcome of the case was not an "unauthorized practice of law" within the meaning of Article 13.

However, the panel noted that a REALTOR® is obligated to "recommend that legal counsel be obtained when the interest of any party to the transaction requires it."

In this case, REALTOR® A was aware that the interest of Customer C required a legal opinion as to whether Customer C could compel Client B to convey title to the property and did

not intend his personal opinion to represent a "statement of law" upon which Customer C could rely. Accordingly, REALTOR® A was obligated to affirmatively recommend that Customer C consult his attorney to definitively establish the legal rights in question.

Having failed to make such a recommendation, REALTOR® A was in violation of Article 13.