CASE INTERPRETATIONS RELATED TO ARTICLE 4:

Case #4-1: Disclosure when Buying on Own Account (Reaffirmed Case #13-1 May, 1988. Transferred to Article 4 November, 1994.)

Client A consulted REALTOR® B about the value of a lot zoned for commercial use, saying that he would soon be leaving town and would probably want to sell it. REALTOR® B suggested an independent appraisal, which was arranged, and which resulted in a valuation of $130,000. The property was listed with REALTOR® B at that price. Shortly thereafter, REALTOR® B received an offer of $122,000 which he submitted to Client A, who rejected it. After the passage of four months, during which no further offers were received, Client A asked REALTOR® B if he would be willing to buy the lot himself. REALTOR® B on his own behalf, made an offer of $118,000, which the client accepted. Months later Client A, on a return visit to the city, discovered that REALTOR® B had sold the lot for $125,000 only three weeks after he had purchased it for $118,000.

Client A complained to the Board of REALTOR®S charging that REALTOR® B had taken advantage of him; that he had sought REALTOR® B's professional guidance and had depended on it; that he could not understand REALTOR® B's inability to obtain an offer of more than $122,000 during a period of four months, in view of his obvious ability to obtain one at $125,000 only three weeks after he became the owner of the lot; that possibly REALTOR® B had the $125,000 offer at the time he bought the lot himself at $118,000.

At the hearing, REALTOR® B introduced several letters from prospects that had been written while the property was listed with him, all expressing the opinion that the lot was overpriced. The buyer who purchased the lot for $125,000 appeared at the hearing as a witness and affirmed that he never met REALTOR® B or discussed the lot with him prior to the date of REALTOR® B's purchase of the lot from Client A. Questioning by members of the Hearing Panel established that REALTOR® B had made it clear that his offer of $118,000 in response to his client's proposal, was entirely on his own account.

The panel concluded that since REALTOR® B's own purchase was clearly understood by the client to be a purchase on his own account, and since the client's suspicions of duplicity were proven to be unfounded, REALTOR® B had not violated Article 4 of the Code of Ethics.

Case #4-2: Indirect Interest in Buyer (Reaffirmed Case #13-3 May, 1988. Transferred to Article 4 November, 1994.)

REALTOR® A had taken two offers to buy a commercial property listed with him to the owner, Client B. Both offers had been considerably below the listed price, and on REALTOR® A's advice, Client B had rejected both. REALTOR® C came to REALTOR® A seeking a cooperative arrangement on REALTOR® A's listing, which was agreeable to REALTOR® A. REALTOR® C brought a contract to REALTOR® A from a prospective buyer, a bank, offering more than the previous proposals, but still 10 percent less than the listed price. REALTOR® A took the offer to Client B and again advised him not to accept an offer at less than the full listed price. Again, the client acted on REALTOR® A's advice. The bank revised its offer, proposing to pay the listed price. This offer was accepted by Client B, the owner.

About a month after the closing, the Board of REALTOR®S received a letter from a director of the bank that had purchased Client B's property, charging REALTOR® A and REALTOR® C with unethical conduct and duplicity which had resulted in the bank's paying an excessive price for the property. The complaint stated that REALTOR® C was a stockholder in a corporation, one of whose officers was a director of the bank; that REALTOR® C, in a transaction that was handled through REALTOR® A, had evidently used his connection with the bank to induce the bank to buy at a price higher than the market; and that neither of the two REALTOR®S had disclosed to the other officers of the bank the connection that existed between them and one officer of the bank.

At the hearing, REALTOR® A defended his actions by stating that he knew nothing of any business relationship between REALTOR® C, the cooperating broker and the buyer; that he had acted wholly in accordance with the best interests of his client, the seller. REALTOR® C demonstrated that he had negotiated solely with the president of the bank; that the director of the bank who happened to be an officer of a corporation in which he, REALTOR® C, held stock was at no time contacted during the negotiations; that the matter had never been discussed with that individual.

It was the conclusion of the Hearing Panel that the indirect relationship between REALTOR® C and the buyer was not of a nature to require a formal disclosure; that REALTOR® C could not be held to be in violation of Article 4. The panel pointed out, however, that in a borderline case where it could be reasonably inferred that a relationship did exist, the spirit of Article 4 would be better served if disclosure were made to avoid any possibility of unfortunate or unfounded suspicions.

Case #4-3: Disclosure of Family Interest

(Revised Case #13-4 May, 1988. Transferred to Article 4 November, 1994.)

REALTOR® A listed Client B's home and subsequently advised him to accept an offer from Buyer C at less than the listed price. Client B later filed a complaint against REALTOR® A with the Board stating that REALTOR® A had not disclosed that Buyer C was REALTOR® A's father-in-law; that REALTOR® A's strong urging had convinced Client B, the seller, to accept an offer below the listed price; and that REALTOR® A had acted more in the interests of the buyer than in the best interests of the seller.

At the hearing, REALTOR® A defended his actions stating that Article 4 of the Code requires disclosure when the purchaser is a member of the REALTOR®'s immediate family, and that his father-in-law was not a member of REALTOR® A's immediate family. REALTOR® A also demonstrated that he had presented two other offers to Client B, both lower than Buyer C's offer, and stated that, in his opinion, the price paid by Buyer C had been the fair market price.

REALTOR® A's defense was found by the Hearing Panel to be inadequate. The panel concluded that Article 4 forbids a REALTOR® to "acquire an interest in" property listed with him unless the interest is disclosed to the seller or the seller's agent; that the possibility, even remote, of REALTOR® A's acquiring an interest in the property from his father-in-law by inheritance gave the REALTOR® a potential interest in it; that REALTOR® A's conduct was clearly contrary to the intent of Article 4, since interest in property created through a family relationship can be closer and more tangible than through a corporate relationship which is cited in the Code as an interest requiring disclosure. REALTOR® A was found to have violated Article 4 for failing to disclose to Client B that the buyer was his father-in-law.

Case #4-4: Responsibility for Subordinates

(Revised Case #13-6 May, 1988. Transferred to Article 4 November, 1994. Revised November, 2001.)

REALTOR-ASSOCIATE® B, a sales associate in REALTOR® A's office, exclusively listed a suburban house and subsequently convinced the seller to accept $20,000 less than the listed price. Several weeks after the transfer of title, the seller filed a written complaint with the Board, charging REALTOR-ASSOCIATE® B with a violation of Article 4 in that REALTOR-ASSOCIATE B had sold the property to his mother without disclosing this relationship to his client, the seller, and that REALTOR-ASSOCIATE® B got the price reduced for his mother's benefit.

The complaint was reviewed by the Grievance Committee which, with the complainant's concurrence, named REALTOR® A as an additional respondent.

At the hearing, REALTOR-ASSOCIATE® B stated that he saw nothing wrong in selling the property to his mother and that the seller would have accepted the contract at the reduced price, even if the buyer had not been REALTOR-ASSOCIATE® B's mother. REALTOR® A stated that REALTOR-ASSOCIATE® B was an independent contractor licensed with him. REALTOR® A acknowledged that he was accountable under the Code for the actions of other REALTORS® and REALTOR-ASSOCIATES® associated with him but shared with the panel information on his firm's orientation program. He noted that he required each licensee joining his firm to complete board-sponsored Code training. In addition, he required everyone in his firm to read *Professionalism in Real Estate Practice*, and produced a form signed by REALTOR-ASSOCIATE® B stating that he had carefully read and understood his personal obligation under the Code of Ethics.

The panel found that REALTOR-ASSOCIATE® B should have made his relationship to the buyer, his mother, unmistakably clear to the seller. He should have disclosed in writing that the buyer was his mother so there would have been no misunderstanding.

The Hearing Panel found REALTOR-ASSOCIATE® B in violation of Article 4.

The Hearing Panel noted that REALTORS® are not presumed to be in violation of the Code of Ethics in cases where REALTORS® or REALTOR-ASSOCIATES® associated with them are found in violation. Rather, their culpability, if any, must be determined from the facts and circumstances of the case in question. It was the conclusion of the Hearing Panel that REALTOR® A had made reasonable efforts to ensure that REALTOR-ASSOCIATE® B was familiar with the Code and its obligations, and that it would have been unreasonable to expect REALTOR® A to have known the purchaser was REALTOR-ASSOCIATE® B's mother. Consequently, REALTOR® A was found not to have violated Article 4.

Case #4-5: Fidelity to Client (Revised Case #13-7 May, 1988. Transferred to Article 4 November, 1994. Cross-reference Case #1-4.)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about $50,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of $32,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of $32,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to $50,000 than $32,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at $55,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for $32,500.

Client A outlined the facts in a complaint to the Board of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

At a hearing before a panel of the Board's Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property—the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

Case 4-6: Disclosure of Secured Interest in Listed Property (Adopted May, 1999.)

Buyer X was interested in purchasing a home listed with REALTOR® B but lacked the down payment. REALTOR® B offered to lend Buyer X money for the down payment in return for Buyer X's promissory note secured by a mortgage on the property. The purchase transaction was subsequently completed, though REALTOR® B did not record the promissory note or the mortgage instrument.

Within months Buyer X returned to REALTOR® B to list the property because Buyer X was unexpectedly being transferred to another state. REALTOR® B listed the property, which was subsequently sold to Purchaser P. The title search conducted by Purchaser P's lender did not disclose the existence of the mortgage held by REALTOR® B since it had not been recorded, nor did REALTOR® B disclose the existence of the mortgage to Purchaser P. The proceeds of the sale enabled Buyer X to satisfy the first mortgage on the property, and he and REALTOR® B agreed that he would continue to repay REALTOR® B's loan.

Following the closing, REALTOR® B recorded both the promissory note and the mortgage instrument. When Purchaser P learned of this, he filed an ethics complaint alleging that REALTOR® B had violated Article 4 by selling property in which she had a secured interest without revealing that interest to the purchaser.

The Hearing Panel agreed with Purchaser P and concluded that REALTOR® B's interest in the property should have been disclosed to Purchaser P or Purchaser P's representative in writing.