

## Getting Away From “Getting Away With It”

By Chris Ryan

Real estate times are tough. In most markets, the days of order-taking and bidding wars are over. Agents are competing for fewer listings. The listings they do land are taking longer to close, even with great continuing education and continually improving service and technology.

This reality, coupled with the formidable power the Internet has handed buyers and sellers hands, has forced brokers, owners, managers and their agents to become smarter, more efficient and more creative in finding prospects and turning them into clients.

In this brave new real estate world, operating above moral reproach has never been more important. One reason stands out above all others, according to industry veteran Marcie Roggow: staying in business.

“People aren’t stupid,” says Roggow, ABR, CCIM, CRB, CRS, GRI, owner of Creative Learning Concepts, LLC, a real estate education company in Sioux Falls, S.D., that specializes in agency matters and risk management. “In the real estate industry today, the buyers and sellers are much more astute than they used to be when it comes to agents’ legal liabilities.”

Ethics, she explains, isn’t some standalone concept that can be easily compartmentalized from other areas within a brokerage. It crosses borders, blending into fair housing laws, antitrust laws and every other imaginable business-critical area.

“If you’re not ethical, there will be a point in time someday when it will come back to haunt you,” she says. “For the good broker today who wants to stay in business and be known for providing great service, he or she has to establish an ethical reputation. In fact, according to the “2007 National Association of REALTORS® Member Profile,” Realtors reported that a full one-quarter of their business was based on referrals from past customers.

“The other as a broker, owner or manager, the first step in getting to that point is to truly know what it means to be ethical and then to lead in executing that vision — which begins with training.”

“I wish every real estate broker in the United States would take the Code of Ethics to every single meeting and go through one item each meeting,” Roggow says. National Association of REALTORS® rules require all members to receive Code of Ethics training every four years.

“But we change the Code every year!” she says, noting that the updated Code of Ethics becomes available every January. “It’s the new items that appear that agents don’t know. You will find that agents don’t know the code, especially new agents.”

In fact, more than one-third of all Realtors — 37% — have four years or less of experience; nearly a quarter have two years or less; and 18% have one year or less, according to the “Member Profile.”

“New agents coming into this business take a real estate exam, and that’s how they get a license,” Roggow says. “The material they learn has nothing to do with ‘how’ you sell real estate. Nothing.”

Thirty-two-year industry veteran Shelley Sears agrees, noting that sometimes correctly applying ethical decision-making skills can be tricky, especially when it’s time to move from the classroom and the printed page to real-life real estate practice.

“Managing brokers have to look into what NAR’s Code of Ethics actually mean,” says Sears, ABR, CRB, CREA, CRS, LTG, founder, CEO and broker/owner for The Shelley Sears Team, Inc., in Woodstock, Ga. She adds that it’s important that strong ethics be fully incorporated into a brokerage’s culture and way of doing business.

“It starts with the leadership team,” Roggow says. “You yourself have to demonstrate the base of ethics that you expect of everyone in your organization — whether it be the secretary, the accountant, the agents, whoever.” The lesson, she says, is that every broker, owner or manager has to establish those standards and avoid hiring even one person who doesn’t meet them.

“If you have a top agent who is unethical, steps on other people and has a problem with every transaction, regardless of their production level, you have to bid them adieu,” she says. “You lead by example and never, ever sway from that. If you keep them on, it sets a bad tone and bad example. Your actions will speak louder than your words.”

Some unethical actions, though, such as the unauthorized practice of law, can come about from a simple lack of knowledge. Though not excusable, mistakes like these re-emphasize the need for frequent continuing education.

“Part of ethics is that we as agents are not supposed to practice law, but every day I see agents writing their own special stipulations,” says Sears. “I preach to my agents that there always has to be a conclusion to anything you write. Sometimes they leave things open-ended. If a problem arises, they don’t know how to solve it. Good management says, ‘You don’t write special stipulations.’”

In metro Atlanta, where Sears works, the local association’s Web site provides drop-down bars with 100 or so prewritten, legally vetted special stipulations that make it easier — and legal — for agents to put together their own contracts.

“All you have to do is click it in, and it’s in the contract,” she says. “But every day, you still see someone writing their own, and that’s practicing law” — which is illegal if you’re not a licensed attorney. “If you write in that a sale is contingent on an appraisal and the appraisal doesn’t come out, what happens after that? It could be renegotiated. It could be null and void. It could be an earnest money return request. That goes back to policies and procedures that say ‘don’t do this’ or ‘do this.’ That’s why they’re there.”

Detailed policies and procedures, Sears explains, set the tone for the whole company and how business is going to be done, and helps avoid situations where agents end up going outside of their boundaries as licensed real estate professionals or, even worse, violating the law. Still, she says, clients test their agents’ ethical boundaries constantly.

“For 30 years, I’ve been selling in Atlanta. You’ll get a seller’s disclosure and people will still ask you, ‘How long do you think this air conditioner will work?’” she says, laughing. “Well, let me get my Crazy 8-Ball out!

“When I think about ethics when working with the public,” she continues, “it’s directing them down the proper path; being honest and truthful. Most buyers don’t want to do that. They get advice from all sorts of people — mothers, cousins, Uncle Harry the roofer — but when it comes to actually listening to the Realtor, and the Realtor saying, ‘I think you need to go to this source for your school statistics or crime rates,’ they won’t look at them. At that point, ethics have to do with being fair to the public, but the public has to be fair back” — which is why a solid knowledge base is such an important component of ethical real estate practice.

The key to filling a brokerage with ethical agents is to actually find ethical people — much easier said than done. You do that, Roggow explains, by asking direct questions about their knowledge of ethics, such as: When was the last time you reviewed NAR’s Code of Ethics? Do you keep a copy in your desk drawer?

The most important question any manager should ask: What is Article 16?

“If you don’t know Article 16, you’re in deep trouble,” she says, referring to the part of the Code of Ethics that deals with agent-to-agent contacts. She also recommends giving interviewees scenarios during the interview, a tactic she learned from fellow CRB and 2000 National CRB President Jeff Nelson, ABR/M, CRB, CRS, also of Sioux Falls, S.D.

When Nelson interviews agents from other companies, according to Roggow, the first thing he does is to produce an agency disclosure form and have the agent disclose his or her agency relationship to him. He also asks the interviewee to fill out a purchase agreement and present it to him.

“If they failed those tests, they weren’t hired,” she says. “I dare say I have never met another broker who uses that format to hire.” Still, Roggow contends, there’s a difference between NAR’s Code of Ethics and what some people consider “The Code of the Road.”

“You can teach the Code of Ethics all day long, but they’ll say, ‘OK, but that’s not how we do it here,’” she says, citing a common example.

“A guy who used to live in that house is a sex offender, but he’s gone,” she says. “Does that have to be disclosed? Some will say that that wouldn’t make any sense [to disclose], while others would say, ‘I can’t possibly live here.’ You can never, ever make decisions for other people. You have to give them all of the information.” That’s a dilemma that even the most seasoned real estate veterans face.

“You can’t be the judge about how a buyer is going to feel about something,” Roggow says. “Unfortunately, veteran agents think they know a lot and that they’ve been in the business long enough to know what other people think. They don’t.”

The biggest ethical shortcoming among agents, Roggow says, is maintaining buyer and seller confidentiality in the same transaction.

“Say you’re my competitor, but we’re friends, and we have lunch once a week,” she says. “I say to you, ‘For God sakes, this property is \$20,000 overpriced, and we wink at each other. People don’t stop and say, ‘Oh, I’ve just violated the Code of Ethics.’”

One way to prevent violations like these is to continually educate your workforce.

Roggow recommends that all brokers who want to be more competitive copy the Code of Ethics without the supplemental Standards of Practice included so that the whole document can fit on one sheet of paper. Then frame it, like a certificate, and make extra copies.

“Put it in every single presentation and say, ‘Our company abides by this Code of Ethics. If you see someone who has infringed these, alert us,’” she says. “It sets you above everyone else immediately.”

Although real estate is identical to other businesses in that it’s important to be ethical, brokers, owners and managers have a special responsibility because of the potential financial impact their and their agents’ services and recommendations can have on a buyer or seller, many of whom are real estate novices.

“I don’t think real estate is different than any other profession,” Roggow says. “If you have a religious sense about you, you know what is right and what is wrong — and doing the right thing is what ethics is all about.”

The ethical dilemmas people experience are based on the values system in which they grew up or grew into, she explains.

“Your life experiences are going to be what guide you to know what your values need to be in order to be ethical,” Roggow says. “Are you accountable? Are you honest? Trustworthy? Fair? — even if it works against you?” She cites the story of a house she showed just recently.

“The buyer said, ‘I love it. I want it.’ I said, ‘Honey, you need to sit down because you don’t know everything’ — and it was a house that I owned.” Though the temptation can be great to go ahead and do the deal right away in situations like this, Roggow says she knew it wasn’t the right thing to do and told her buyer to wait and think about it, adding, “I have to go out every week and have dinner with your parents.

Whatever you call it — karma, “what goes around comes around” or any other cliché — in the end, it comes down to one simple maxim.

“Those who do things right will succeed above those who do things wrong,” Roggow says. “It’s been proven over the years that those who do their best to be ethical and operate within the law will succeed. Those who cut corners will find their success is limited to a short period of time.”

“That might be my pie-in-the-sky idealism,” she says, “but that’s the way I’d like to see the industry go forward.”

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