



# TRAINING TIP OF THE WEEK

## When Prospecting is Unethical

REALTORS® should be aware that interfering with an existing relationship between an agent and a client could constitute a violation of Article 16 of the REALTORS® Code of Ethics. But there can be confusion over specific prospecting activities and tactics and whether or not they cross the line. Let's untangle some of the thorny issues involving client representation and business solicitation that can lead to problems.

**Question:** Would I be in violation of the Code if I sent a prospecting mailing for both buyers and sellers to a list based on specific demographics like income and ZIP code? I am buying the mailing list from a commercial mailing list company.

**Answer:** As long as you follow Article 16 and Article 10 of the Code, you won't be. First, your prospecting piece must never be discriminatory or express a preference or limitation based on the protected classes in the Code. Standard of Practice 10-3 says "REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity."

Though Article 16 is sometimes referred to as the "non-solicitation" article, this description can be misleading. Article 16 does not prohibit all solicitations or even solicitations of other REALTORS®' clients under some circumstances. The Article provides "REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients." Article 16 applies only to relationships with clients where the REALTOR® has an exclusive representation or exclusive brokerage relationship. If there is no exclusive relationship, Article 16 doesn't apply.

Even when there are exclusive relationships between REALTORS® and clients, there are some circumstances where prospecting that includes contacts with those clients is not an Article 16 violation. Standard of Practice 16-2 makes clear that "Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®." Prospecting is not in violation so long as the mailing pieces are a general announcement of the REALTOR®'s services and terms of availability even if some of the people receiving the mailing are clients of another REALTOR®.

So, what constitutes a "general announcement?" Standard of Practice 16-2 says it's "general" if it is "addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other group ..." It also doesn't matter what distribution method is used, whether mail, electronic, telephone canvass, or other advertising (like a billboard). When preparing a mailing to a given geographical area, like a neighborhood or subdivision, it's not required to be sent to every single property in the neighborhood or subdivision to be a "general" announcement. So, a nondiscriminatory demographic list from a commercial mailing company based on nondiscriminatory characteristics like household income would be a general classification or group.

Unethical solicitations are addressed in Standard of Practice 16-2. One type is telephone and personal solicitations of owners when the REALTOR® has identified the owner through the MLS or a sign. The other is when the mailing is not a general mailing but a mailing or distribution where the owners have been identified through the MLS or a sign. Both of these unethical solicitations are based on the REALTOR® "targeting" listed properties through the MLS or a real estate sign.

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