

## Real Estate Agent: Keeping Relatives Secret



**By Brian Madigan LL.B.**

This could present something of a problem! And, recently it did for an Ontario real estate agent who thought that it would be best if he failed to mention that he was related to the buyer. Maybe someone (namely, the vendor) might think that he had ulterior motives.

Mr. Smith came across one of his broker's listings. He thought it would be a good deal for his relative. So, he showed the property, submitted an offer, and negotiated a final purchase price.

Since this was an "in office" listing the rules of dual agency, now referred to as multiple representation applied. You might think that would prompt some additional disclosure. But, it didn't. Mr. Smith thought that it would be better simply to conceal this fact. Better to negotiate with the vendor while the vendor was under the impression that Mr. Smith was maintaining an even-hand between the parties.

This failure to disclose this special relationship is against the common law rules of agency. This is relevant information and an agent is duty bound to bring it to the attention of the principal. However, as you might imagine, it would be easier to trick the vendor if Mr. Smith kept this fact to himself. And, this is precisely the reason why the duty of disclosure goes back over 5,000 years. It is designed to prevent this little piece of trickery.

Nevertheless, there are other more specific ethical rules that were breached. There are statutory obligations pursuant to the *Real Estate and Business Brokers Act* that also apply.

In this case, shortly before closing this information came to the attention of the vendor, namely that the agent who brought the buyer was in fact related to the buyer. The vendor obviously questioned just how independent and impartial Smith's advice might have been. It should be mentioned that the listing agent was also present, but unaware of the relationship.

### **Summary of Allegations:**

Mr. Smith acted unprofessionally when he failed on two occasions, to provide to the vendors written statements and have the vendors acknowledge in writing, his registration status and interest in the purchase of the property, thereby breaching the following Rules of the RECO Code of Ethics:

**Rule 1** – A Member shall:

(2) endeavour to **protect the public** from fraud, misrepresentation or unethical practice in connection with real estate Transactions,

### **Rule 5 – Financial Disclosure:**

A Member shall disclose the financial aspects of a Transaction and any personal interest of the Member in a matter to the Parties sufficient to enable them to make an informed decision.

### **Rule 23 – Obedience to Law:**

A Member shall practice in accordance with all federal, territorial or provincial law or municipal by-law relevant to the Member fitness to practice.  
Real Estate and Business Brokers Act, R.S.O. 1990, chap. R. 4

### **Statement where broker or salesperson purchases for resale**

31. (1) No broker or salesperson shall purchase, lease, exchange or otherwise acquire for himself, herself or itself or make an offer to purchase, lease, exchange or otherwise acquire for himself, herself or itself either directly or indirectly, any interest in real estate for the purpose of resale unless the broker or salesperson first delivers to the vendor a written statement that he, she or it is a broker or salesperson, as the case may be, and the vendor has acknowledged in writing that the vendor has received the statement.

(2) Where real estate in respect of which a broker or salesperson is required to give a statement under subsection (1) is listed with the broker or, in the case of a salesperson, is listed with the broker by whom the salesperson is employed, appointed or authorized to trade in real estate, the statement shall include,

(a) full disclosure of all facts within the broker's or salesperson's special knowledge that affect or will affect the resale value of the real estate; and

(b) the particulars of any negotiations or agreement by or on behalf of the broker or salesperson for the sale, exchange, lease or other disposition of any interest in the real estate to any other person.

## **Rule 42 – Competence:**

A Member shall render conscientious service with the knowledge, skill, judgement and competence, in conformity with this Code of Ethics and the standards which are reasonably expected of Members. When the Member is unable to render such a service, either alone or with the aid of other Members, the Member shall decline to act.

Reference should be made to the Guiding Principles of the RECO Code of Ethics. Please particularly refer to the Guiding Principles under Rules 1, 5, 23 and 42.

The matter proceeded before the Discipline Committee at the Real Estate Council of Ontario in March 2008 and Mr. Smith was ordered to pay a fine of \$5,000.00.

## **Comment**

The \$5,000.00 fine is simply a penalty, it is not compensation to the vendors who were the victims of his deceit.

It should also be mentioned that Mr. Smith could be sued by the vendors for the diminution in the purchase price. The additional savings that he passed on to his relative would have to be remitted to the vendors.

The Committee made its decision in accordance with the statutory rules in effect in 2005. The Act was substantially changed in March 2006 when a new Act came into force

***As a rule, I use fictitious names. The actual case is published on RECO's website and is available to the public. For educational purposes, the names of the parties really don't have any bearing. If you need to quote the case, you will have to obtain the proper legal citation.***

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