

The Ethics Around AWOL Agents

How knowledge of REALTOR® ethics rules helped me get a higher sales price for sellers.

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It's funny how the REALTOR® Code of Ethics pops up in everyday transactions. A recent listing reminded me that knowing the rules can help you remain professional and earn your clients more money.

In Silicon Valley, where I work, multiple offers are very common. I listed a home in Palo Alto at \$1,968,000, after discussing with my seller that it would likely sell for more than our asking price, but that pricing it lower would ensure competition. After the first weekend of open houses, we got five offers. Two were "lowball" offers (compared to the other three) of \$2 million. The third was for \$2.15 million, and the fourth and fifth were at \$2.3 million and \$2.35 million, respectively.

I believe my biggest value to sellers is in raising the sales price. So I reached out to the agents for all five bidders to tell them we had multiple offers and that they should submit their highest and best offer. Through their agents, two of the five increased their price. The bidders who offered \$2.3 million raised their offer to \$2.33 million. The bidders who offered \$2.35 million now offered \$2.38 million. At that point, my highest offer was \$2.38 million, which was more than the sellers had expected. Then the high bidders got cold feet and dropped their offer to \$2.36 million.

It was still the highest offer, but something was nagging at me. Through all the negotiations, I couldn't for the life of me get ahold of the agent who sent over the \$2.15 million offer. I had a great offer for my sellers, but I don't like leaving any stones unturned. Then I remembered that at the open house, I'd actually met the bidder whose agent sent over the \$2.15 million offer; that potential buyer worked at Apple and had given me his business card.

I knew that ethically, it's improper to reach out directly to another agent's client. I tried to contact the agent a few more times, but the agent wasn't returning my calls, so I weighed my options. I thought, well, that bidder was obviously interested in the home since he made an offer, and maybe there was still an opportunity for me to negotiate an even higher price for my client. I'm familiar with the Code of Ethics and know that Article 16 provides guidance on the best way to handle the situation. Generally, it cautions us not to interfere with the agency relationships of our fellow REALTORS®.

With that in mind, I decided to call the bidder and said, “Sorry, I don’t usually do this, but we’re about to begin negotiating on offers the sellers have received. I haven’t been able to get in touch with the agent who presented your offer. Have you signed an exclusive agreement with that agent?”

The buyer told me he had not and wanted to talk. So I told him that if he was still interested in the home, he should submit his best offer.

Because doing much more at that point would have raised the risk of me becoming a dual agent, it was important to get this bidder’s agent on board, which we did. The bidder said the most he could offer was \$2.3 million. That still wasn’t going to beat the highest offer. So when I was on the phone with the buyer and his agent, I explained that over the life of the loan, the difference in the monthly mortgage payment on \$2.3 million and \$2.4 million wasn’t going to be that large. That did the trick. The bidder came back and offered \$2.38 million—and the property closed two weeks later.

Later, I thought about the way the transaction had gone. I was glad that when faced with an agent not returning my calls, I had Article 16 in mind and decided to ask the potential buyer if he had signed a contract in which he agreed that agent exclusively represented him. If the buyer had said yes, it would have been unethical at that point for me to continue discussing the transaction.

I’ve been in real estate for 16 years, and I was reminded of several lessons on this transaction. First, it’s hard for buyers to guess the right amount for a first offer. You should never assume buyers’ first offer is their final offer—even if it’s considerably lower than all the other offers the sellers have received. And more importantly, scenarios that trigger questions about how to comply with the Code of Ethics are incredibly common in our business. You’ll be much more successful knowing about the Code and the protections it provides your clients and fellow REALTORS®.



Alex Wang

Alex Wang is a self-described real estate evangelist and broker-associate with Sereno Group in Palo Alto, Calif. Connect with Alex at alexwang.com, visit his Facebook page, or follow him on Twitter [@alexwang](https://twitter.com/alexwang).