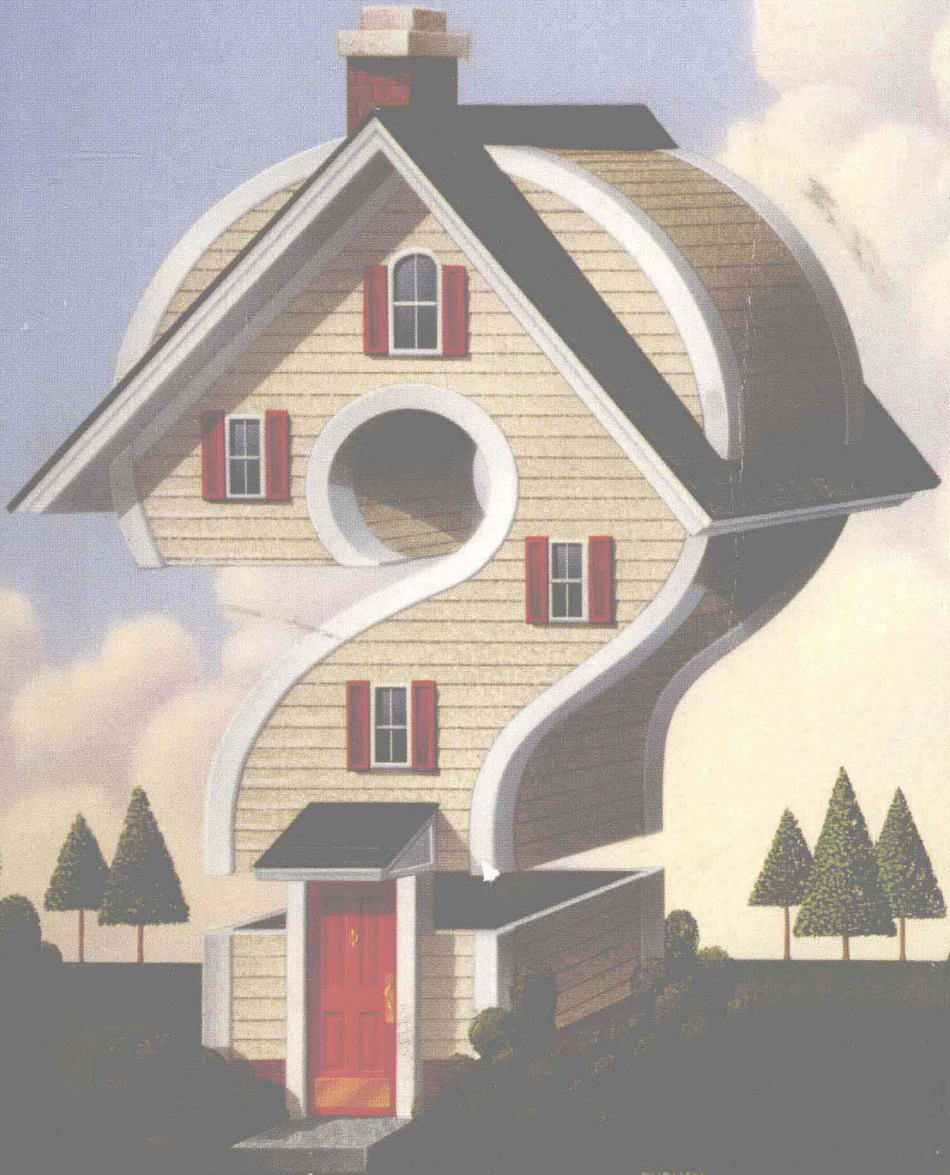


SECOND EDITION

DOING THE RIGHT THING

*A Real Estate Practitioner's Guide
to Ethical Decision Making*



RUDNAK

DEBORAH H. LONG

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SECOND EDITION

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Preface

The perception of real estate practitioners as unethical is so commonplace that the term *real estate ethics* is considered an oxymoron by members of the public and often by the profession itself! Negative characterizations appear everywhere in the popular media; witness, for example, the portrayal of real estate agents in such films as *Glengarry Glen Ross*, *Pacific Heights*, and *Wall Street*.

Real estate practitioners are no more or less ethical than the average American. However, we often have a difficult time doing the right thing for a few reasons: first, confusing, complex, and sometimes contradictory laws, rules, and codes of conduct govern real estate practitioners; and second, practitioners lack decision-making experience confronting ethical dilemmas.

This book was designed to help real estate practitioners face and resolve these problems. The objectives of this guide are fourfold: to help real estate practitioners (1) become aware of personal values and principles; (2) formulate a personal code of ethics; (3) become aware of laws and regulations (or the lack thereof) that may govern responses to ethical dilemmas; and (4) develop and implement a rational model for ethical decision making.

The text is written in workbook format so that readers can respond to the exercises individually or as part of a class exercise. To keep the discussion grounded in reality, case studies from real estate trade magazines and journals, as well as from daily newspapers, appear in the chapters.

The first half of the book, Chapters 1–6, provides background to the problems that confront real estate professionals and insight into the development of values, principles, and ethics. These chapters also introduce a philosophical and psychological overview of moral development so that readers can better understand their own methods for resolving ethical dilemmas. Models for ethical decision making are provided to enable readers to employ a variety of strategies for dealing with ethical problems in real estate. Finally, readers are given some guidance on professional and legal standards governing the real estate business.

The second half of the book, Chapters 7–12, is a handbook and a workbook. These chapters examine specific ethical issues, such as agency, civil rights, stigmatized properties, environmental hazards, and relationships with colleagues, employers, and the community. Each chapter ends with questions (“How Would You Respond?”) and possible responses dealing with dilemmas commonly confronted by real estate practitioners. Lastly, a list of additional resources is provided for readers who wish to explore ethical issues not only in real estate, but in business generally and at home.

Today’s real estate practitioners are more likely to encounter difficult ethical issues than ever before. Like professionals everywhere, real estate agents

can choose to engage in responsible and morally desirable behavior, help people in need, and do the right thing. This book points us in that direction.

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I was fortunate to be surrounded by supportive family, colleagues, friends, and mentors during the writing of this book. Without my husband's encouragement and willingness to take on more than his share of family responsibility, I would never have been able to complete my work on time. Our daughter, Jennifer, should be commended for her patience while I spent hours at the word processor. I promise to make it up to her. I also wish to acknowledge the influence of my sister and mother, my friends, and my graduate professors in the shaping of this work. I am particularly grateful to the following real estate educators, who reviewed the manuscript and offered suggestions as to how it might be improved: Richard J. Clemmer, Hugh Ryall, Leslie Campbell, Barry Caudill, Charles E. Krackeler, and John Reilly. I also wish to thank colleagues who provided me with the news clippings referred to in the new case studies.

I became interested in this project for a number of reasons. When people discover that I teach basic licensing law and principles to real estate practitioners, they often relate stories of real or perceived poor ethical conduct by practitioners with whom they have come in contact. As an educator, I became interested in whether ethical reasoning skills could be taught in a classroom to adults whose reasoning skills and moral conduct have already been shaped by earlier influences. My graduate work proved that ethics education *can* make a difference in the way we think and act.

Perhaps more significantly, I am a child of Holocaust survivors, and as such, I have always been disturbed by the fact that the horrors of Auschwitz and Nazi Germany were perpetrated by educated people: architects and engineers built the crematoria; medical doctors performed inhumane experiments on victims; and lawyers made it legal. The many moral failures witnessed in the Holocaust can ultimately be attributed to a system that valued many things over the development of character and conscience. All of the skills we acquire in the classroom and at work are meaningless unless we are taught the value of human life: without ethical reasoning skills, we are not fully human.

Deborah Long

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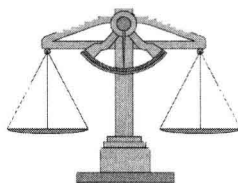
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ONE



Ethics and the Practice of Real Estate

Meno: Can you tell me, Socrates, whether virtue is acquired by teaching or by practice; or if neither by teaching nor practice, then whether it comes to man by nature, or in what other way?

Socrates: You must think I am very fortunate to know how virtue is acquired. The fact is that far from knowing whether it can be taught, I have no idea what virtue is.

Never has it been more difficult to be a real estate agent than it is today. Not only are real estate professionals grappling with significant technological changes in the industry, they are dealing with social and cultural upheaval as well. In the last 15 years, technological innovations such as personal computers, fax machines, and portable telephones have given practitioners faster access to more information. These marvelous inventions have revolutionized the brokerage business and changed the way agents handle their day-to-day business.

Social changes have also transformed the real estate marketplace. In the last few decades, the U.S. economy has shifted from an industrial to a service orientation. Baby-boomers are aging, women are participating in the workforce in greater numbers, and the number of single-parent households is rising. These demographic changes have had an enormous impact on the real estate marketplace. They also provide opportunities—if we are prepared for them. New technology means we can provide our customers and clients with more information faster. Social and cultural changes can lead to new markets for residential and commercial real estate.

Social, demographic, and technological change—particularly rapid change—can be challenging and stressful. If new technology creates faster access to more information, it also demands higher education and more critical thinking skills for professionals. While real estate practitioners once were considered mere conduits of information, practitioners today must interpret and evaluate information, not merely pass it along. In the area of finance, for example, brokers and salespersons have to keep up-to-date on almost a minute-by-minute basis to discuss the advantages and disadvantages of various loan programs intelligently.

Information about real estate is more accessible than ever to the public. Today's buyers and sellers demand competence and accountability from their real estate agents. They ask more and tougher questions about issues that were not in our vocabulary 10 years ago: radon, electromagnetic fields (EMFs), and lead-based paint, to name a few.

Social and demographic changes can open up new markets, but in order to serve those markets, real estate professionals must also adapt. To best serve all their clients, agents today may benefit from being bi- or multi-lingual and from understanding how to deal with individuals from various cultures. Agents must also be sensitive to gender, race, and disability issues. In addition to the demands of a dynamic marketplace, real estate agents must understand constantly changing federal, state, and local laws.

The demands upon real estate professionals to meet these day-to-day challenges are overwhelming. While pre- and post-licensing courses provide real estate students with the information about practices, principles, and state laws needed to enter the profession, rarely do these courses supply the skills necessary for *survival* in the business. It is no surprise, then, that practitioners are not always up to the challenge. According to the Association of Real Estate License Law Officials, in 1995 alone, state regulatory agencies investigated over 28,000 complaints against real estate agents and over 2,700 real estate agents in the U.S. lost their licenses, either through suspension or revocation, or paid an administrative fine. Since candidates must undergo a background check before licensure, it may be safe to assume that few of these complaints were filed against individuals who had *criminal* intent to harm the public. Any of three additional assumptions may be made:

1. Many of these agents got “in trouble” not because they had criminal tendencies, but because they either were unaware of or did not fully understand the rules, regulations, and/or laws they violated.
2. The offenders, though not career criminals, were *aware* of the rules, regulations, and laws and violated them knowingly.
3. They were aware of the rules and laws but *poor judgment* caused them to make bad decisions regarding their professional behavior.

Many believe that once we become adults, our values, principles, and behavior are set in stone. In fact, some believe that these are firmly estab-

lished by the age of five. Both beliefs are myths. If they were true, we would have to relinquish all hope that education and experience have any power to change us.

The belief that change is possible is not merely wishful thinking. Psychologists and educational researchers have provided significant evidence that experience and education *can* improve the ability to reason morally. However, these studies indicate that for ethics education to be effective—that is, for individuals to become more ethical—several conditions must exist. First, we must be exposed to ethical philosophies and ideas. We also need a chance to explore our own values and principles before going on to role play and internalize ethical teaching. Finally, for an ethics program to be valuable and sustainable, we must be exposed to individuals who reason at higher levels.

Unfortunately, *having* an enhanced ability to reason morally does not necessarily translate to *using* it. Ethics instruction can remove moral blinders, make us more aware of moral values, and enhance self-knowledge and decision-making ability, but without the support of caring parents, friends, coworkers, and society, it is difficult to nurture a conscience. Knowing what is ethical is no guarantee of ethical behavior.

What makes people do the right thing? Moral action comes from competence, will, and habit. Psychologist Thomas Lickona (1992) argues that *moral competence* is the ability to turn moral judgment and feeling into effective moral action. He defines will as a “mobilizing of energy to do what we think we should” (p. 62). Habit results from the practice of being a good person so that doing the right thing becomes an unconscious practice.

What stops us from doing the right thing? Sometimes we lack the ability to deal with an ethical issue (competence), cannot resist temptation and withstand peer pressure (will), or have little practice at being good (habit). Other times, our own misplaced beliefs about ethics prevent us from acting.

Consider the following myths and the corresponding realistic views concerning them.

Myth	Reality
<i>In order to make an ethical decision, we must be morally perfect.</i>	Even exceptionally good people make poor moral judgments or commit unethical acts. Developing character is not a short-term process but a lifelong one.
<i>Ethical behavior is based on values and one person's values are as good as another's.</i>	This type of thinking, called moral relativism, teaches that any judgment that reins in personal freedom is intolerable. However, we must measure values against a standard, otherwise we cannot distinguish between what we want to do and what we should do.

The answers to all ethical problems can be found in our professional code of ethics.

Codes structure an understanding of behavior, but they rarely anticipate every problem that we may face.

Making ethical decisions means playing God. It's not up to me to make these decisions.

In most ethical dilemmas, you can rely on rules, policies, and laws that lead you to reasonable solutions. In other cases, you must search your soul or conscience. Some believe conscience is the divine spark within. Remember, not making a decision has consequences, just as taking action does. You are not powerless to act. Govern yourself accordingly.

People are either ethical or not.

Everyone is capable of a variety of responses to ethical dilemmas ranging from inappropriate to appropriate, from wrong to right, from illegal to legal. Whether people behave ethically or not depends upon the circumstances at that moment.

If people would just follow the law, we wouldn't have ethical problems.

The law sets a minimum standard for acceptable behavior. Living by ethical standards inspires us to do more than the law requires.

Real estate professionals always know when they are acting unethically.

They often do not know. The ethical dilemmas we confront are so complicated that we need all the resources we have to solve them.

Adults can't change their ethics. It's too late.

Research indicates that adults can improve their ethical thinking skills as well as their conduct. The greatest period of increased ethical consciousness is during the twenties and thirties, when young adults face ethical dilemmas on their own for the first time. Stage development also occurs when adults face a life transition or crisis that forces them to reevaluate their conduct or thinking. Research also indicates that education programs can increase ethical thinking skills.

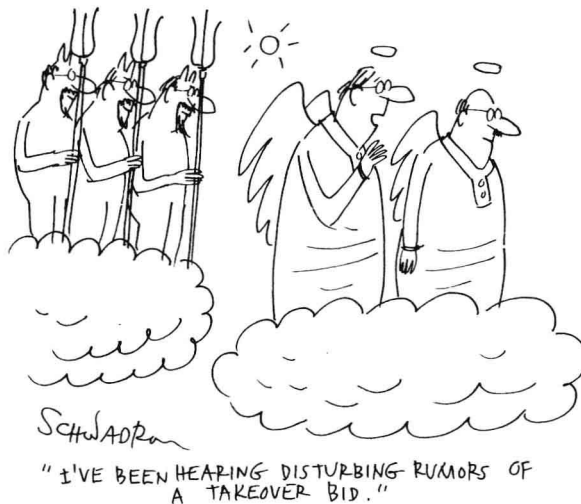
I'm just one person. What can I do that will make any difference?

Everything you say and everything you do, no matter how insignificant to you, can bear a message or have a consequence. The authors of

Chicken Soup for the Soul illustrate this by describing a man who was walking along a beach and noticed that, because of the low tide, thousands of starfish were stranded on the beach. A second man was walking toward him picking up starfish and throwing them back into the ocean. The first man asked the second man why he was doing this since he couldn't save all the starfish, and therefore, his actions wouldn't make a difference. The other man responded by picking up another starfish, throwing it back into the water, and saying "Made a difference to that one."

*Being ethical is great,
but I still have to earn
a living and work
in the rat race.*

Ethics and business are not mutually exclusive. Practical solutions can be ethical, and the pursuit of ethical excellence can yield material rewards. Many firms place a value on loyalty, avoiding harm to others, being just, and earning trust and respect. As comedienne Lily Tomlin once said, "The trouble is even if you win the rat race, you're still a rat."

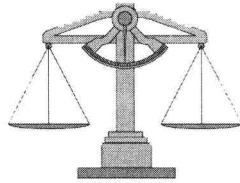


Our misplaced belief in these myths sometimes causes us to exercise poor ethical judgment. Nevertheless, remedies are available: real estate practitioners have access to continuing education courses, professional seminars and workshops, and trade journals. More and more often, state regulatory agencies order violators to attend continuing education courses. Furthermore, the majority of states have mandated that all licensees return to the classroom every few years for an update on evolving laws or practices.

Few education courses exist to help practitioners make good decisions when facing moral or ethical dilemmas. Courses that do help licensees develop their moral reasoning ability compress the information into three hours or fewer! Research indicates that improving an adult's ethical reasoning requires a more sustained educational program.

It has never been more important to learn. In light of the technological, social, and demographic changes sweeping our business, it is increasingly important that we learn to navigate new and uncertain ethical terrain. Learning to make sound ethical judgments is a lifetime task, usually begun in childhood by our parents, elaborated upon by teachers and peers, and never finished. As real estate professionals and concerned individuals, we must begin to understand our own value systems and see how these values aid in dealing with ethical dilemmas.

TWO



Values, Principles, and Ethics

Strong personal character should manifest itself in service to organizations and communities and in courage in public life. The moral crisis of our time means more and more people lack the liberating self-mastery that allows them to commit and serve independence and integrity befitting a free people.

Walter Nicgorski

Ethical dilemmas constantly confront the real estate agent. For example, one of the most common dilemmas in real estate is balancing our fiduciary responsibility to our client with the customer's right to know. Disclosing information such as a leaky roof or the possible presence of radon may curtail a buyer's interest. Rather than giving primary consideration to the legal and ethical issues at stake, real estate agents may find their responses tempered by the amount of the commission involved.

How can we recognize when a business decision has ethical implications? Consider the "red flags" listed in the box on page 8. All of these concerns indicate an ethical dilemma, and recognizing a problem is the first step toward resolution. Before we can respond to an ethical dilemma, however, we must understand how we think about moral problems. What are principles, values, and ethics? Often these terms are used interchangeably, but for our purposes, we must distinguish between them.

UNDERSTANDING PRINCIPLES AND VALUES

Principles are fundamental truths. They serve as enduring moral guideposts. Similar principles are found across most cultures and religions and provide a guide for human and institutional conduct. Principles are made up

Ethical Dilemmas—Characteristics and Examples

Here are some signals that I am facing an ethical dilemma. When I think about this situation:

- I use words such as “right,” “wrong,” “bottom line,” “values,” “conflict of interest,” or “ethics.”
- I want to call the state regulatory agency (or a local real estate school or professional association hotline) to determine its legality.
- I question whether my actions or inactions will harm anyone. I list the advantages and disadvantages of my decision.
- I question whether I am being fair to everyone. I wonder if I would do the same thing if others were involved. The Golden Rule comes to mind: “Do unto others as you would have them do unto you.”
- I feel that something is wrong.
- I feel torn between two or more values, goals, or parties.
- I hesitate to share this problem with others. I worry that others may object to or oppose my decision.
- I worry what others will think about it.

Here are some situations where I might face an ethical dilemma:

- I’m showing a minority couple a neighborhood where there have been incidents of racial unrest. Should I tell the buyers?
- A suspected child molester wants to make an offer on my listing near an elementary school.
- My seller has asked me to conceal the property’s proximity to EMFs.
- A suicide took place on this property two months ago. My seller–client does not want me to reveal this information to prospects.
- My broker has asked me to conceal escrow fund shortages.
- My top-producing agent is using drugs. Should I terminate him or try to correct the problem?
- I’ve rejected a listing because it was in a minority neighborhood that I don’t service.
- I’ve negotiated a contract that will cause environmentally sensitive land to be developed.

of “natural” laws found throughout history. They are permanent, reflect human morals, and carry a great obligation.

Principles are not the same as values, but the two are related. *What we value can become the building blocks of our principles.* As Stephen R. Covey (1989) wrote in *The Seven Habits of Highly Effective People*, “Principles are the territory. Values are maps. When we value correct principles, we have truth, a knowledge of things as they are” (p. 35).

Examples of Principles

On fairness: “Do unto others as you would have them do unto you.” (the Golden Rule)

On self: “To thine own self be true.” (Shakespeare)

On freedom: “It is better to die on your feet than live on your knees.” (Dolores Ibarruri, Paris, 1936)

1. *Values are mutable and temporary.* For example, an older person may value health more than a young person. A person who has lost a relative may prize family more than someone who has not.
2. *Values can be nonmoral or illegal.* For example, someone may value a stolen object or a high-speed drive down the highway.
3. *Values do not necessarily carry a sense of obligation.* Values may merely express likes or dislikes. For example, someone may value jazz as a form of expression but not be obligated to attend a jazz concert.

EXERCISE

Values Auction

Use the following exercise to determine what you value. Imagine that you are attending an auction of values, and you have twenty \$10 bills, totalling \$200. You must spend the entire \$200 to purchase values from the list below, using only \$10 increments. You may spend more on one value than on others. Spending more or less on different values indicates how important those values are to you.

\$ ____ Accountability

Accepting the consequences of your actions and the responsibility for your decisions. Setting an example for others and avoiding the appearance of impropriety.

\$ ____ Caring	Treating people as ends in themselves, not as means to an end. Having compassion; treating people courteously and with dignity; helping those in need; avoiding harm to others.
\$ ____ Education	Completing your educational goals with good/outstanding grades.
\$ ____ Fairness	Being open-minded and willing to admit error; not taking undue advantage of another; avoiding favoritism; treating people equally and justly.
\$ ____ Family	Having a warm, pleasant family life.
\$ ____ Freedom	Living in an environment at work and home that maximizes personal freedom and independence.
\$ ____ Friendship	Having companions you can count on and forming lasting friendships.
\$ ____ Health	Having good health with almost total absence of physical or mental problems.
\$ ____ Helping Others	Contributing to the emotional, physical, and educational well-being of others through work or hobbies.
\$ ____ High Income	Earning top income early in your career.
\$ ____ Honesty/Integrity	Being truthful. Keeping commitments. Being faithful to principles.
\$ ____ Leisure	Having free time to enjoy personal pleasures.
\$ ____ Loyalty	Being faithful to those with whom you have a relationship, whether in business or in friendship.
\$ ____ Justice	Working to preserve the rights of others in society.
\$ ____ Moral Courage	Being able to think and do the right thing, even at risk to personal well-being.
\$ ____ Prestige	Having status in your community or society due to achievement.
\$ ____ Pursuit of Excellence	Striving to be as good as you can be: being industrious, committed, and professional.