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Professional ethics of intermediaries on the real estate market

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Abstract: Professional ethics may reduce transaction costs and improve relations between intermediaries and customers. In this article, a general overview of the basic principles of professional ethics of real estate intermediaries in Poland is provided.

Keywords: real estate markets, professional ethics, real estate intermediaries, Poland

1. Introduction

Although ethics embraces the whole range of human behaviour, it is often applied to a particular area of human activity. One of these areas is professional ethics, which concerns the application of general moral guidelines to real-world situations in a certain professional group (Bittner and Stępień, 2000: 47). Acting according to ethical norms may provide both sides in economic transactions with an advantage, as it may strengthen trust and lower transaction costs related to the problem of lying and cheating (see Molho, 1997).

Real estate agents play an important role in the development of the real estate market. A real estate agent as an intermediary between supply and demand on this market should be associated with professional behaviour, honesty and integrity, resulting from respect for and compliance with the law as well as principles of professional ethics. Without the engagement of the real estate agents in the development of professional norms and standards, they are less likely to support them and take responsibility for integration and dignity of the professional groups.

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According to Article 281 of the Law on Real Estate (Ustawa o gospodarce nieruchomościami Dz.U. z 1997 r., Nr 115, poz. 741 z późn. zm.), the intermediary operating on the real estate market is obliged to act in accordance with the rule of law as well as professional standards, with the scrupulosity appropriate for the professional character of the activities and principles of professional ethics. He / she is obliged to be guided by the principle of protection of the interest of the person or company for whom these activities are carried out. When acting against these principles, there exists the possibility of applying disciplinary punishment (reprimand, suspension or deprivation of the professional license).

The aim of this article is to give a general overview of and discuss the basic principles of professional ethics of real estate intermediaries in Poland. The main source used is the document "Professional standards for intermediaries on the real estate market" (*Standardy zawodowe pośredników w obrocie nieruchomościami*) developed by the Polish Real Estate Federation (*Polska Federacja Rynku Nieruchomości*) in agreement with the Ministry of Infrastructure. The Ministry issued a communique on the matter on 18 March 2009, which was published in the Official Journal of the Ministry of Infrastructure from 23 April 2009 (Dz. Urz. MI nr 3, poz. 14).

2. Professional ethics of real estate intermediaries

Professional ethics can be interpreted as written norm answering the question how representatives of the profession in question should or should not act and behave from the moral point of view (Lazari-Pawłowska, 1992: 84). Another approach is presented by Bittner and Stępień (2000: 47), who define professional ethics as moral norms and judgments related to the professional activities, which are accepted and considered to be obligatory by the professionals, but are not always codified or written down, like in the case of medical doctors or army officers. It can be argued that professional ethics concerns the application of general moral standards, which are respected in the professional group or community, and adjusted to the particular situation in the profession in question. It is in particular the unwritten moral norms that may strengthen the formal rules in the profession in question, creating a kind of institutional equilibrium where informal rules support the formal system (compare Platje, 2011). However,

different professional groups may have different hierarchies of values. Not necessarily the same norms may be considered as being the most important.

Professional ethics concerns inter-human relations regarding professional situations in at three levels: the individual, the profession group, society. The task of professional ethics is:

- to make people sensitive to the moral aspects of a profession (professional honour, professional dignity),
- regulate the relations between people in the same profession (mutual aid, solidarity) and influence the professional identification of people which in turn influences the development of their personality (Bittner and Stępień, 2000: 48).

Professional ethics appears in the form of institutionalized norms (codes, oaths, vows) and norms formulated as loose individual propositions or as a structured set of postulates. These norms and postulates are, generally speaking, developed in order to correct reality towards a certain standard or norm. These norms should be internalized by the professionals and be reflected in their professional activity. The content of the principles of professional ethics is determined by the economic and social role of the people working in the profession in question. However, the formulation of clear deontological rules is characteristic only for certain professions, in particular concerns those having social prestige and requiring a high level of trust (Lazari-Pawłowska, 1992: 84-91). This is also the case for the real estate market, where the transaction costs of obtaining complete information are very high for the customer not only because of the heterogeneity of real estate as a product, but also because of the differing legal conditions and difficult to assess aspects in the market (Furubotn and Richter, 1997). It can be argued that professional ethics is a mean to increase trust of customers in the professional group in question.

While professional ethics has an economic background and may reduce transaction costs, it also develops from a kind of natural feeling of morality, facilitating the identification of behaviour that may harm others and how to make the proper decision. However, the moral requirements are higher than normally in this case. Ethics does not provide specific answers or instructions for professional issues of intermediaries on the real estate market. Principles of professional ethics rather give leads that may be helpful for creation proper the relations with the client of the intermediary as well as other actors on the real estate market.

The professional ethics of the intermediary should first of all support the protection of the interests of the customer, contracting services regarding real estate transactions. It is also related

to the rules of dealing with partners or competitors of the intermediary. Ethics should shape the dignity of the profession of intermediary, which has important practical implications due to the social impact. Without professional ethics, it is likely that the intermediary will only focus on economic issues, i.e., profit.

Professional standards of intermediaries on the real estate market are rules that oblige to carry out transactions professionally and with professional dignity. These standards are formulated in the form of orders and prohibitions. Mandatory provisions direct or may even perpetuate behavior considered to be ethically correct. Prohibitions are intended to prevent undesirable behaviour.

Professional standards for intermediaries are divided in different sections (see Table 1 and 2). Section I entitled Principles of Professional Ethics embraces 5 chapters, and makes up a collection of generally accepted moral and ethical norms that should guide the professional intermediary.

Chapter 1 concerns general ethical and moral principles applied to the profession of intermediary on the real estate market. This seems to be obvious, as professional ethics cannot exist without general ethical principles. Another provision of the chapter defines the duties of the intermediary in order to protect the interests of the client on whose behalf the agent performs his professional activities. These duties concern the principle of equal and fair treatment of all parties engaged in the transaction. This means that the intermediary, while handling in the interest of the client, should not treat the other parties unfair or avoid contacts during the preparation of the transaction. In particular the integrity towards the counterparty to the customer obliges to transfer his accumulated knowledge about the state of real estate and expected conditions of real estate trading (Karpiński, 2007: 27). This may create sometimes a conflict with the client willing to sell real estate, as enclosing information on the real quality of an object may reduce the price received, while this also may reduce the fee obtained by the intermediary.

Table 1.Professional standards of intermediaries on the real estate market

Section I – Principles of Professional Ethics

Chapter 1 General principles	**§ 1.** The real estate agent, hereinafter referred to as the intermediary, should be guided by the principles of professional ethics. The rules of professional conduct of the intermediary arise from generally accepted moral and ethical standards. **§ 2.** The intermediary shall act in such a way as to protect the interests of the people, for whom intermediary services are provided, considering the principles of fair treatment of all parties to the transaction. **§ 3.** The intermediary should be loyal to the client and do not damage the mutual trust.
Chapter 2 Professional integrity	**§ 4.** The intermediary is obliged to comply with the law and professional standards. **§ 5.** The intermediary is obliged to act with due diligence in the performance of intermediary activities. **§ 6.** The intermediary is obliged to refuse intermediary activities which would be in conflict with the law or professional standards.
Chapter 3 Expertise and professionalism	**§ 7.** In the performance of intermediary services, the intermediary should respect the market trends. **§ 8.** The intermediary must not undertake intermediary activities that go beyond the scope of his knowledge and experience.
Chapter 4 Professional secrecy	**§ 9.** Information obtained by the intermediary related to the exercise of intermediary activities is a professional secret. In particular, the information obtained in the course of performing their duties may not be transferred to third parties. Secrecy does not apply to the transfer of information necessary for the proper performance of the service and information that may affect the security of the transaction.
Chapter 5 The prestige of the profession	**§ 10.** The intermediary shall ensure that relationship with other intermediaries is based on the principles of fair competition, loyalty and respect. **§ 11.** The intermediary should not act in a manner undermining the interests of entrepreneurs employing him. This concerns in particular the transmission, disclosure or use of information constituting a trade secret in the meaning of the Act of 16 April 1993 on counteracting unfair competition (Official Journal from 2003, no. 153, par. 1503, with later changes). **§ 12.** The intermediary is not allowed to execute instructions of its employer which are illegal or a breach of professional standards. **§ 13.** The intermediary is not allowed to disseminate false or misleading information about other intermediaries, about his own enterprise, about other entrepreneurs and enterprises, as well as their professional practices **§ 14.** The intermediary should support the activities of professional organizations and help to ensure a high status of the profession. **§ 15.** The intermediary should endeavor to eliminate in its surroundings practices which are in contradiction to the law and professional standards, or derogatory to dignity of the profession. **§ 16.** The intermediary is not allowed to use functions carried out in professional organizations for own benefit.

Source: *Standardy zawodowy pośredników … (Professional standards of intermediaries …)* (2009).

Table 2. Professional standards of intermediaries on the real estate market
Section II – Professional standards

§ 17. The intermediary performs intermediary services based on a written agreement concluded with the contracting party. The agreement includes the name and surname of the professional responsible for its execution, its professional license number and a statement by an agent of the possession of civil liability insurance for damage caused in the exercise of agency activities. The scope of agency activities is specified in the agreement.

§ 18. The role of the intermediary consists of collecting and providing the information needed for the conclusion of contracts by other persons as mentioned in Art. 180 par. 1 of the Act on real estate. Such information is related to economic and market conditions and the way the intermediary's service is carried out, activities related to finding a counterparty, bringing the different contract parties together, arranging inspection of the property and, at the request of the customer, participation in the negotiations as well as assistance in finalizing the transaction by undertaking organizational activities, unless the agreement provides otherwise

§ 19. The intermediary not allowed to advertise, announce the sale, rental or other trading opportunities regarding properties, which are not mentioned in agency agreement, with the exception of cases resulting from agreements concluded between intermediaries or entrepreneurs

§ 20. Advertisement, printing, written or oral information given by the intermediary should be consistent with the facts and legal state, and be uniform in its terms with regard to the remuneration drawn. Advertisements published on the Internet must include the license number of the professional responsible for the implementation of the agency agreement.

§ 21. The intermediary documents performed intermediary activities regarding the implementation of the agency agreement.

§ 22. The intermediary shall always disclose the role of intermediary in the performance of agency activities. In each place where the intermediary undertakes professional activity, the testimony of possessing the professional license in the field of real estate agency services should be visible.

§ 23. The intermediary is not allowed to give false statements concerning the sale or rent of real estate to contracting partners.

§ 24. The intermediary is allowed to perform intermediary services for both parties to the transaction, subject to their written consent.

§ 25. The intermediary is not allowed to offer mediation services below their cost or presenting them as free of remuneration.

§ 26. Advertisements about remuneration to be paid by only one of the parties in the transaction shall bear the explanation which of the parties has to pay the remuneration of the intermediary.

§ 27. Before concluding the agency agreement, and the inclusion of an exclusivity clause, the intermediary is obliged to inform the client about the consequences of such a clause, and the signing of such an agreement.

§ 28. Before concluding the agency agreement, the intermediary is required to obtain information from the customer on whether the property is subject to a previously concluded agreement with an exclusivity clause.

§ 29. The intermediary performing the intermediary activities under the agency agreement with an exclusivity clause, aims at the widest possible visibility of the property and is not allowed to impede access to information on the property being the subject of the contract.

§ 30. In case the intermediary performing intermediary activities for the supplier of the property present this customer another intermediary, the other intermediary should only have contacts with the client with the knowledge and consent of the agent who introduced him.

Source: *Standardy zawodowy pośredników … (Professional standards of intermediaries …)* (2009).

Table 2. Professional standards of intermediaries on the real estate market
Section II – Professional standards (cont.)

§ 31. The intermediary is not allowed to induce the customer to terminate, amend or fail to perform an earlier concluded intermediary agreement.
§ 32. The intermediary has the right to submit general offers representing a range of services to persons who have concluded an exclusive agreement with another intermediary, when such an offer are a part of a wider promotional campaign.
§ 33. In case of cooperation between intermediaries, arrangements regarding the remuneration and the method of its distribution should be specified in written form at the time of establishing the cooperation.
§ 34. The intermediary who received information about a property from another agency is obliged to disclose the source of the information during the first contact with the seller and take special care of the interests of the intermediary supplying the information.
§ 35. The intermediary shall ensure that persons performing intermediary services under his direct supervision follow the rules under the provisions of law and rules of conduct contained in the standards of professional real estate agents. The intermediary shall ensure that they have a written statement about the performance ancillary activity under his supervision. The intermediary is professionally liable for the acts or omissions of such persons.
§ 36. The intermediary performing his profession on the basis of an employment or a civil contract with an entrepreneur active in the field of real estate agency should contractually secure his real impact on all activities carried for the other party, in particular regarding the content of advertisements related to the performance of intermediary activities.
§ 37. The intermediary is obligated to draw attention of other intermediaries on conduct violating the rules and standards of professional real estate agents.

Source: *Standardy zawodowy pośredników … (Professional standards of intermediaries …)* (2009).

Paragraph 3 of the general principles obliges the intermediary to be loyal to the customer and not damage trust. Loyalty should result from a fair and honest performance of provisions agreed upon in the contract. Breach of the duty of loyalty may cause not only loss of the right to remuneration of the intermediary and the reimbursement of expenses, but also the need to pay compensation. However, it seems that more and more often not the lack of loyalty of the intermediary towards the client, but the lack of loyalty of the client towards the intermediary becomes a problem (Karpiński, 2007: 28). An example might be the lack of respect for the confidentiality of information obtained from intermediary, the employment of different intermediaries or concluding the real estate transaction without the involvement of the intermediary in order not to pat the agent's commission, while services were delivered.

The second section regarding professional integrity embraces the obligation to comply with legal rules and professional standards, and to act with the utmost care in the performance of the intermediary activities. In addition, the intermediary is obliged to refuse to perform the duties, which would be in contradiction with the rules of the profession. In reality, the intermediary may obtain propositions from buyers or sellers to conclude a transaction violating the law and / or professional standards. An example is to offer a real estate for sale via an intermediary, without a

written agreement identifying the customer's rights and obligations, the level of commission, etc. While this may lead to a reduction of the commission paid by the customer, he runs the risk of larger damage in case of disagreements regarding the transaction between the buyer and seller. It seems that many customers underestimate the role of professional intermediaries in reducing problems regarding disagreement on the implementation of the contract, as well as the importance of identified responsibilities and rights in case of disagreement. Furthermore, the risk of not obtaining the remuneration by the intermediary increases, while the illegal payment in order to prevent payment of value added tax is a criminal offense. When discovered, the intermediary may lose clients, reputation and even his license.

Standards regarding expertise and professionalism are the topic of the third section of the professional standards of intermediaries on the real estate market. They provide that the performance of intermediary activities should be guided by the current market trends. The real estate market is influenced by general economic, financial, institutional and legal phenomena (Kucharska-Stasiak, 2006). Knowledge on these issues is of crucial importance for the work of the intermediary.

From time to time cyclical fluctuations in the real estate market can be observed. The causes of these cycles lie at the supply as well as the demand. Such cycles may last a couple of years, and appear irregularly. For example, an investment boom triggered off by increased demand (e.g., due to increased consumer income) may have as a consequence a sudden increase in supply after some time. The investment boom itself may lead to an increase in national income, which in turn may lead to an additional increase for real estate, leading to an additional increase in the house prices. At the end of the investment boom, an economic downturn may appear, reducing the demand for real estate, and putting a downward pressure on prices. Furthermore, when people invest in real estate for rent, this may lead to a paradox of decreasing rent prices when people want to buy houses to live in themselves. However, on a more regular basis distinctive phases featured by seasonal and accidental variations can be observed, characterized by periodic increase or decrease in certain types of transactions or real estate prices. An example of seasonal variations in Poland is the increased demand for renting rooms, apartments and houses in August and September by students (the study year starts 1 September and ends about the end of June) or the increased demand for real estate for recreational purposes in spring (Kucharska-Stasiak, 1999). While on the one hand students create demand for renting

rooms, the tradition of renting a room for 9 months creates difficulties for supply due to the reduced income related to the difficulties of finding new reliable students. An example of accidental variations is the change in tax regulations regarding real estate and real estate rent and trade, as well as a change in exchange rates as many mortgages were taken in foreign currency.

As the examples above show, knowledge and interpretation of many determinants of the real estate market, in particular those of an economic nature, is of vital importance for the intermediary. Ethical standards in this area can be interpreted as the obligation to possess actual current knowledge in the field of business cycles, fluctuations, trends, etc. (Karpiński, 2007: 28), as this is elementary for the creation of value for the customer.

As is emphasized in par. 8 of section 3, the intermediary is not allowed to undertake activities that are beyond the scope of his knowledge and professional experience. This embraces more restrictions than acting within the limits of competences resulting from the real estate agent's license. The intermediary should not provide services which are normally provide by lawyers, tax advisers, property valuers and geodesists. The reason is that due to a lack of knowledge and expertise mistakes can be made, or services cannot be delivered timely, which may result in significant damage for the customer (Karpiński, 2007: 28). Such activities may not only reduce the quality of services provided, but may also negatively influence the reputation of intermediaries in general.

The fourth section of professional standards of intermediaries concerns professional secrecy. The intermediary is not allowed to transfer information obtained from customers to third parties. Information necessary for delivering intermediary services as well as information that may influence the safety of the transaction are excluded from this standard. The work of the real estate agent is associated with a thorough analysis of the legal status and the actual real state of the real estate offered. Reliable performance of information collection, processing and verification affects the security of transactions, the customer's wealth and in turn customer satisfaction. A satisfied customer may recommend an agent as a specialist, which may increase the demand for the intermediary's services and contributes to reputation as instrument of creating competitive advantage.

The principle of secrecy applies to information obtained in the performance of agency activities, as well as consulting activities in the field of the real estate market, preparation of studies and expert opinions. It should be noted that the obligation of secrecy does not end after

the termination of the legal relationship between the intermediary and the customer. This in particular concerns the real estate sales price and the identity of the customer. Of course, secrecy does not apply when the customer agrees with this.

The last paragraph of the ethical principles of intermediaries concerns the prestige of the profession. It includes provisions indicating the principles regarding the relationship between intermediaries themselves as well as their relationship with professional organizations. The intermediary shall ensure that the relationship with other intermediaries is based on the principles of fair competition, loyalty and respect. As intermediaries have common objectives and interests, they should be interested in creating a model properly understood competition, based on a sense of responsibility and high level of skills. Competition should rely on individual search and struggle for obtaining orders, and shared, corporate implementation. A partnership may be organized using different systems for multiple offers of real estate at the national and regional level. In such a model competition is not based on price reduction in order to obtain customers, but on creating synergy effects in offering intermediary services (Karpińskim, 2007: 29). However, a threat of such cooperation is the appearance of price collusion, i.e., the increase of the commission for the intermediary above the market equilibrium. Furthermore, there exists the threat of mutual deception of cooperating intermediaries regarding the current customer, future customers and the terms of the transaction.

The next ethical principle regarding to the prestige of the profession concerns the prohibition of activities that may damage the client. This concerns in particular business secrets of business clients. The intermediary has the right to refuse illegal activities when demanded by the customer. It is considered to be unethical to disseminate false or misleading information about other intermediaries, as well as other market participants. This in particular concerns false information about competitors and the range and quality of their services, when criticism is based on popular opinion and not on information obtained from reliable sources. However, this principle may be abused to keep secret malpractice within the branch when falsely interpreting the principle as a kind of professional solidarity. This can be prevented when another ethical principle is applied regarding the elimination of activities which are in contradiction with the law, professional standards or would be derogatory to the dignity of the profession.

The last two ethical principles regarding the prestige of the profession concern the relationship intermediary - professional organization. The first one concerns the support of the

intermediary for activities of professional organizations and contribute to ensuring a high prestige of the profession. Engagement in ventures and activities of regional associations and clubs strengthens the profession as a group and may create a positive image in the eyes of the public, helps to unify service performance at a high level, and increases knowledge of individual intermediaries. Intermediaries organized in regional associations integrate the professional community and organize the cooperation between representatives of corporations in the local real estate markets. It provides the opportunity to create and apply systems of multilateral cooperation between intermediaries and other participants in the real estate market. Such cooperation may embrace the exchange of offers, the organization of the different forms of promotion and advertising professional services, as well as joint action against intermediaries violating the law and established good habits. As a part of continuous learning, associations may organize courses, workshops and seminars addressed to all intermediaries operating in the regions. Their goal is not only to create opportunities to improve professional qualifications, being a statutory obligation, but also the support the pursuit of professionalism. Regional organizations may play an important role in resolving disputes between associated intermediaries, as well as between intermediaries and their customers. This may prevent legal struggles as well as conflicts, which are not only costly, but also may harm the image of the branch (Karpiński, 2007: 30). However, as earlier discussed, ethical principles may be abused for collusive purposes. Tacit agreements may be made between intermediaries, markets may be divided, and artificial solutions be found regarding conflicts with customers. For this reason, outside monitoring by customer organizations or governmental agencies may be a useful instrument, when there are no self-enforcing mechanisms supporting healthy competition and cooperation within the profession.

This problem is addressed by the second ethical principle concerning the relationship broker - professional organization, the prohibition to use the professional organizations for own benefit. The significance of the professional organization lies in the separation of the social work for the benefit of the professional group from activities only aimed at personal benefit, regardless of the type of activity. Performing a function in an associations is statutory a social function, for which some intermediaries are chosen who because of their predispositions are able to do more for the other members of the profession (Karpiński, 2007: 30).

3. Concluding remarks

Principles of professional ethics are derived from generally accepted moral and ethical norms. While legal documents exist where such norms are formulated, the formulations remain general, and open to different interpretations. Thus, while professional ethics are an instrument reducing transaction costs on the real estate market, there remain opportunities for rent-seeking and opportunistic behaviour. While there are no legal instruments for punishing someone for acting against the principles of professional ethics, an ethical code creates such a possibility and in turn may lead to professional behaviour which leads to increased consumer satisfaction. Furthermore, it may increase the relation between intermediaries and customers. While in general the elimination of unethical behaviour positively influences the whole branch, unethical behaviour may be in the short-term interest of individual firms. Unethical behaviour may lead to reduced trust in intermediaries and negatively influence their reputation. This, in turn, may lead to long-term decline in demand for their services. This may strengthen threats for the branch posed by, for example, the development of Information Technology, making information available for the customer and reducing the value added produced by the intermediary.

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Standardy zawodowe pośredników w obrocie nieruchomościami – komunikat Ministra Infrastruktury z 18 marca 2009 roku w sprawie uzgodnienia standardów zawodowych pośredników w obrocie nieruchomościami (Dz. Urz. MI nr 3, poz. 14) wydane na podstawie art. 181 ust. 5 ustawy o gospodarce nieruchomościami.

Ustawa z 21 sierpnia 1997 r. o gospodarce nieruchomościami (Dz.U. z 1997 roku, Nr 115, poz. 741 z zm.).

Etyka zawodowa pośredników na rynku nieruchomości

Streszczenie

Etyka zawodowa może ograniczać koszty transakcyjne i poprawiać relacje pomiędzy pośrednikiem a klientem. W niniejszym artykule przedstawiono podstawowe zasady etyki zawodowej pośredników działających na rynku nieruchomości w Polsce.

Słowa kluczowe: rynek nieruchomości, etyka zawodowa, pośrednicy w obrocie nieruchomości, Polska