



STICKING TO THE CODE OF ETHICS



Learning Objectives



This course will examine the 17 articles of the code. The instructor will guide dialogue and encourage interactive conversation as we explore the different directives of the REALTOR® Code of Ethics. This course is designed to provide an insight into how the REALTOR® Code of Ethics guides us in our professional representation of the consumer, whether a client or a customer, our obligations to the public and to our fellow REALTOR®

At the end of this course students will have a practical working knowledge of the **REALTOR® Code of Ethics**

They will be able to identify any challenges they might face and identify the balance between a successful real estate career and ethical conduct, not matter what they face as they work with customers, clients or other REALTORS®

- We will begin the class with an overview discussion of the individual Articles of the Code of Ethics. A copy of which is provided in the student manual. After a discussion of each of the Articles, the student will be able to define the basic premise of each Article.
- The course will define the reasons behind the establishment of the Code of Ethics by defining the atmosphere consumers faced as they attempted to purchase real property. Through discussion of the challenges consumers faced, the student will be able to understand why the Code of Ethics was created, be able to relate the concept of each Article to today's environment and will understand the impact the Code of Ethics has on everyday industry issues.
- As we discuss the Preamble and the Standards of Practice, the student will gain a deeper understanding of how to elevate the integrity and ethical conduct of our profession and of their individual actions.
- We will discuss, define and differentiate what our ethical obligations are to our clients, customers and to our fellow REALTORS®
- The course will then offer a discussion as we work to understand the difference between the Grievance committee and Professional Standards committee. We will define the timelines for filing a complaint and possible penalties.
- A final discussion will take place based on a scenario provided at the end of the course which is designed to stimulate conversation and breakdown different opinions.

Topics of conversation that the course provides for include:

What ethical obligations to customers do I have?

What is the difference between a customer and a client?

What are the limits to my disclosure requirements?

Who needs to know about a REALTORS® compensation?

What are the procedures and timelines for filing a complaint?

Do I have to show up for a hearing?

Understanding material facts.

Where do Fair Housing and Discrimination issues fall within the Code of Ethics?

Can I be found in violation of the Code by voicing my opinion as it relates to any of the protected classes.

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I am a REALTOR[®]

I Pledge Myself

**I pledge to protect the individual right of real estate ownership
and to widen the opportunity to enjoy it;**

To be honorable and honest in all dealings;

**To seek, to better represent my clients and customers
by building my knowledge and competence;**

To act fairly toward all in the spirit of the Golden Rule;

To serve my community well, and through it, my country;

**And to observe the Code of Ethics of the NATIONAL ASSOCIATION OF
REALTORS[®]**

and conform my conduct to its lofty ideals.

WELCOME TO YOUR CLASS

REALTOR® Code of Ethics and You

Every business requires the careful balancing of three essential elements:

1. Profitability
2. Legal Compliance
3. Ethical Conduct

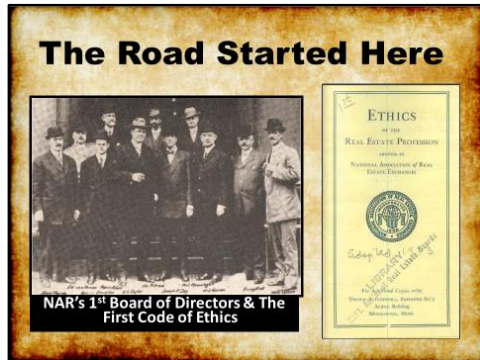
It is the day to day balancing of these three issues which sometimes makes for hard decisions, particularly when two or more of these items appear to be in conflict. While these aspects of profitability and ethical conduct may sometimes appear to real estate practitioners to be in conflict, each of these items has a profound impact on each other that agents can easily overlook. Most of the evidence which has been accumulated demonstrates that honesty, trustworthiness and ethical conduct plays a large role in the public's decision to do business with certain entities and individuals.

Rise of the REALTOR® Code of Ethics Challenges for a Changing World

Attempting to elevate professionalism in any industry is not an easy task. The process of elevating the level of professionalism began decades ago. Raising the Bar of Professionalism is a continual and ongoing process. The very first real estate brokers appeared on the street corners in the mid 1800's. They had no formal arrangement and simply acted to "broker" a transaction between a seller and buyer, similar to the sale of any commodity. There were no professional standards or codes of conduct and the brokers worked from the street corners and tried to interest people in properties that they had on their "lists." It's where the term "listing a property" originated and it also is why to this day real estate practitioners are referred to as "brokers."

The Nation was Growing

We were known as “PEDDLERS”



Our road of evolution into the role of a professional began in the early 1900's. The National Association of REALTORS® was founded as the National Association of Real Estate Exchanges on May 12, 1908 at the YMCA Auditorium in Chicago, Illinois. With 120 founding members, 19 Boards, and one State Association, the National Association of Real Estate Exchanges' objective was "to unite the real estate men of America for the purpose of effectively exerting a combined influence upon matters affecting real estate interests."

The Challenge

In 1913 the National Association of Real Estate Exchanges drafted the first Code of Ethics. It is important for brokers to understand that the Code was not created as merely a set of rules and regulations which members were required to adhere to as a condition of membership. The Code was created to provide the organization with a set of standards for professionalism which would help elevate brokers in the eyes of the public.

The basis of the Code became the Golden Rule, ***“Do Unto Others As You Would Have Them Do Unto You.”***

The purpose of the Code was to create a transformation in the industry that would change the way in which the public regarded brokers. In order to achieve such a transformation, the industry leaders believed that brokers would have to engage in practices which always placed the interests of clients and consumers ahead of their own. Today we find those principles firmly imbedded in the text of the Code of Ethics.



The original drafters of the Code wanted to make certain that brokers in the representation of customers and clients had powers and abilities that went beyond simply trying to buy or sell homes. In fact in the Preamble the drafters outlined the importance of adhering to Code provisions by stating that, “Such interests impose obligations beyond those of ordinary commerce.”

The Preamble – Bedrock of the REALTOR® Code of Ethics

The drafters of the Code outlined the fundamental characteristics that brokers should adhere to in the Preamble to the Code of Ethics. A partial list of those characteristics are as follows:

- **Patriotic Duty**
- **Diligent in Preparation**
- **Zealous to improve standards**
- **Competency**
- **Fairness**
- **High Integrity**
- **Lofty Ideals**

While the Preamble to the REALTOR® Code of Ethics is sweeping in its moral and ethical platitudes, the Preamble contains specific directions as to what brokers can do to elevate the integrity and ethical conduct of the profession. You cannot be cited for violating the Preamble – Just the Articles of the Code. The Preamble is aspirational.

The Importance of Ethics to Today's Consumers

The Code of Ethics is much more than a set of rules and guidelines. Its provisions were designed to empower brokers to build better relationships with clients and establish a relationship that is built on trust, honesty and integrity. Every year the National Association of REALTORS® conducts surveys of buyers and sellers in real estate transactions. The results of these surveys are published by NAR as the ***Profile of Home Buyers and Sellers***. The Profile contains a wealth of information telling brokers exactly what consumers are seeking in their agency relationships as well as how such relationships are formed. The Profile is available to all REALTORS® on the NAR website, REALTOR.Org.



These surveys provide information on demographics, housing characteristics and the experience of consumers in the housing market. Buyers and sellers also share information on the role that brokers play in home sales transactions. This report provides brokers with insights into the needs and expectations of their clients. Let's face it, we can't begin to meet the needs and desires of today's clients until we know exactly what those needs and interests are in today's real estate market. What do consumers want when choosing a broker? How do home

buyers begin the process of searching for a home? Why do some sellers choose to forego the assistance of an agent? The answers to these questions, along with other findings in this report, will help brokers better understand the housing market and also provide the information necessary to address the needs of America's real estate consumers. Being informed makes you a better REALTOR®

Anatomy of the Code

The REALTOR® Code of Ethics is comprised of 17 Articles. REALTORS can only be charged with a violation of an Article. Each article is accompanied by numerous Standards of Practice that add further insight and interpretation of the Articles. As REALTORS® we should be familiar with the various Articles of the Code.

Article 1 _____

Article 2 _____

Article 3 _____

Article 4 _____

Article 5 _____

Article 6 _____

Article 7 _____

Article 8 _____

Article 9 _____

Article 10 _____

Article 11 _____

Article 12 _____

Article 13 _____

Article 14 _____

Article 15 _____

Article 16 _____

Article 17 _____

Agency

Article 1

Protect and Promote the Interest of the Client

When Representing a buyer, seller, landlord or tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve the REALTORS® of the obligation to treat all parties honestly. When serving as a buyer, seller, landlord or tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (1/01)

The very basis of real estate representation today draws a distinction between clients and customers. Clients are those people with whom a REALTOR® and/or their firm has established an agency relationship. REALTORS® owe fiduciary duties to clients and owe obligations of honesty, accountability, reasonable care and the disclosure of material facts to customers. Do no HARM.

The fiduciary obligations which brokers owe to their clients include those referenced by the acronym OLDCAR:

- **Obedience**
- **Loyalty**
- **Disclosure**
- **Confidentiality**
- **Accounting or Accountability**

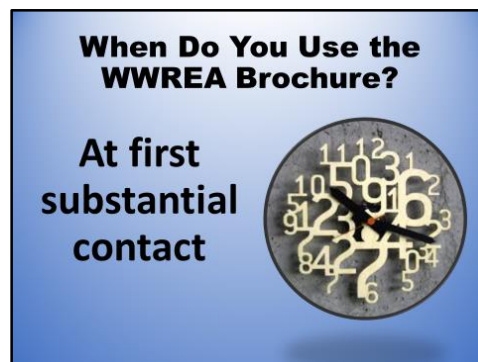
- **Reasonable Skill & Care**

It is important for clients to understand the nature of the relationship that is being created; the agency obligations of the broker and the rights of the client and/or customer. The North Carolina Real Estate Commission insists that brokers use the “Working with Real Estate Agents” disclosure to properly inform the public of agency obligations.

Real Estate Commission Rule 58A.0104(c) provides:

“In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication *“Working with Real Estate Agents,”* set forth the broker’s name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact occurs by telephone or other electronic means of communication where it is not practical to provide the *Working with Real Estate Agents* publication, the broker, shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter...”

The disclosure of agency occurs at first substantial contract regardless of whether or not the consumer decides to hire the broker. First substantial contact occurs when the consumer provides or the broker asks about:



**Personal
Financial**

Confidential Motivational Wants, Needs & Desires

Disclosure

The Many Facets of Disclosure

Article 2

Avoid Exaggeration and Misrepresentation

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (1/00)

Although North Carolina is a caveat emptor “Buyer Beware” state, REALTORS® have an obligation to accurately provide property information to both clients and customers and to disclose.

The obligation to disclose is broad and encompasses a number of issues. Brokers are required to disclose all of the following:

- All offers on the property
- All compensation received to their principal
- All interests in the transaction
- All material facts

Disclosure poses one of the most significant risks to firms and their brokers. It is one of the most common liability claims against the industry, disclosure, with fraud being at the top of the list. In

order to understand the nature of these claims, brokers must understand the varying nature of non-disclosure.

The obligation to disclose is contained in Article 2 of the Code. The various Standards of Practice help highlight numerous disclosure duties and North Carolina real estate statutes and rules contain a variety of disclosure obligations.

Misrepresentations, Omissions & the Real Estate Professional

Standard of Practice 2-1

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. (1/96)

A misrepresentation is any statement regarding a property or transaction that turns out to be false. There is no requirement that the information be known to be inaccurate. However, based on the actions and knowledge of the licensee, misrepresentations are placed into different categories.

In North Carolina, G.S. 93A-6(a)(1), which establishes four separate (although closely related) categories of conduct which are prohibited:

Willful Misrepresentation - This occurs when a licensee who has “actual knowledge” of a material fact deliberately misinforms a buyer, seller, tenant or landlord concerning such fact. A misrepresentation is also considered to be “willful” when a licensee who does NOT have actual knowledge of a matter material to the transaction provides incorrect information concerning such matter to a buyer, seller, tenant or landlord without regard for the actual truth of the matter (i.e., when a licensee intentionally provides information without knowing whether it is true and the information provided is in fact not true).

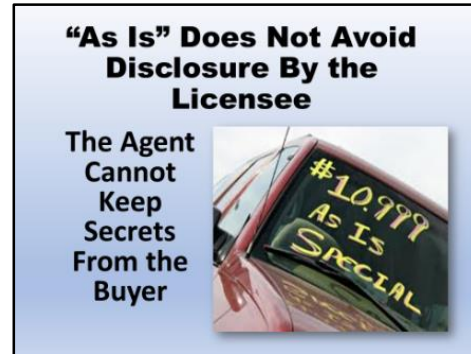
Negligent Misrepresentation - This occurs when a licensee unintentionally misinforms a buyer, seller, tenant or landlord concerning a material fact either because the licensee does not have actual knowledge of the fact, because the licensee has incorrect information, or because of a mistake by the licensee. If a reasonably prudent licensee “should reasonably have known” the truth of the matter that was misrepresented, then the licensee may be guilty of “negligent misrepresentation” even though the licensee was acting in good faith.

Willful Omission - This occurs when a licensee has “actual knowledge” of a material fact and a duty to disclose such facts to a buyer, seller, tenant, or landlord, but deliberately fails to disclose such fact.

Negligent Omission - This occurs when a licensee does NOT have actual knowledge of a material fact and consequently does not disclose the fact, but a reasonably prudent licensee “should reasonably have known” of such fact. In this case, the licensee may be guilty of “negligent omission” if he/she fails to disclose this fact to a buyer, seller, tenant or landlord, even though the licensee acted in good faith in the transaction.

Brokers are not required to act with the expertise of a home inspector, appraiser or contractor, but are required to exercise reasonable care in the disclosure of information regarding the property. Such disclosure requires the licensee to avoid making both misrepresentations and omissions.

This is one of the key reasons why brokers make regular referrals to experts. Brokers are not permitted to give legal or tax advice and should get into the regular habit of referring clients and customers to those professionals with specialized knowledge who can assist the REALTOR® in meeting their obligations of disclosure.



Material Facts & the Obligation of Disclosure

For purposes of applying G.S. 93A-6(a)(1), whether a fact is “material” depends on the facts and circumstances of a particular transaction and the application of statutory and/or case law. The Commission has historically interpreted “material facts” under the Real Estate License Law to include at least:

- **Facts about the property itself** (such as a structural defect or defective mechanical systems);
- **Facts relating directly to the property** (such as a pending zoning change or planned highway construction in the immediate vicinity); and
- **Facts relating directly to the ability of the agent’s principal to complete the transaction** (such as a pending foreclosure sale).

Regardless of which party a broker represents material facts must be disclosed to all parties in a transaction. In regard to material facts a broker is required to disclose everything he/she knows and everything he/she should have known to both clients and customers.

Note, however, that G.S. 39-50 and 42-14.2 specifically provide that the fact that a property was occupied by a person who died or had a serious illness while occupying the property is not a material fact and the licensees do not need to voluntarily disclose such a fact. If a prospective buyer or tenant specifically asks about such a matter, the agent may either decline to answer or respond honestly. If, however, a prospective buyer or tenant inquires as to whether a previous owner or occupant had AIDS, the agent is prohibited by fair housing laws from answering such an inquiry because persons with AIDS are considered to be “handicapped” under such laws and disclosure of the information may have the effect of discriminating against the property owner based on the handicapping condition. The fact that some properties may be sold “As Is” does not relieve the agent from liability for obligations of disclosure.

ARTICLE 3

Cooperation with Other Brokers

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (1/95)

3-2 Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease on the property. After a REALTOR® has submitted an offer to purchase or lease for the property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to the cooperative transaction (1/14)

3-3 Does not preclude the listing broker and the cooperating broker from entering into an agreement to change the cooperative compensation. (1/94)

3-9 REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker (1/10)

3-10 The duty to cooperate established in Article 3 relates to the obligation to share information on the listed property and to make property available to other brokers for showings to prospective purchasers/tenants when it is in the best interest of the seller/landlord, (1/11)

Self-Interests & Ownership in the Property

Article 4

Reveal if you have an Ownership Interest

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have an ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property, they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Brokers are required to avoid the appearance of self-dealing in real estate transactions. If the agent has a personal interest in the transaction for which the agent has been employed and such interest might affect the agent's loyalty to the principal, the agent is under a strict obligation either to remove him/herself from the transaction or to disclose his/her personal interest to the principal and proceed only with the principal's consent.

ARTICLE 5

Have and Interest? Don't Provide Services!

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 5 of the REALTOR® Code of Ethics would appear to suggest that a broker may engage in transactions where they have an interest so long as such interest is specifically disclosed to the parties involved. In North Carolina, specific rules place an even more restrictive rule on licensees when dealing with properties in which they have an ownership interest.

A North Carolina licensee who has an ownership interest in the property may not undertake to represent a buyer of that property. When working with a buyer who wishes to purchase the property the licensee is required to keep the buyer in the role of a customer.

Rule A.0104(o) now provides that:

A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property except that a broker who is selling commercial real estate as defined in Rule 58A .1802 in which the broker has less than 25% ownership interest may represent a buyer of that property if the buyer consents to the representation after full written disclosure of the broker's ownership interest. A firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer consents to the representation after full disclosure of the broker's ownership interest.

The rule was enacted because the broker has an inherent conflict between his own interest in making a good deal when selling the property and helping the buyer get a good deal in purchasing it. The rule change is designed to help licensees avoid situations where they might be accused of failing to work in their buyer-client's best interests, because their ability to put the principal's interests (the buyer) ahead of their own self-interests is impaired.

This rule applies whether the interest by the broker exists in their individual name, through their interest in an entity or whether they have a marital interest in the property.

Similarly, where the property that is subject to the transaction is owned by the real estate **entity** with which a broker is affiliated, no broker affiliated with the entity may represent a buyer. The buyer remains a customer.

ARTICLE 6 **Getting Compensated? Get Permission!**

REALTORS® shall not accept and commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services, (e.g., homeowners insurance, warranty programs, mortgage financing, title insurance etc.)

REALTORS® shall disclose to the client or customer to whom the recommendation is being made any financial benefits or fees, other than real estate referral fees the REALTOR® or REALTORS®'s firm may receive as a direct result of such recommendation. (1/99)

The obligations of REALTORS® under Article 6 of the Code include the duty to disclose the receipt of compensation.

Answer the following

How do you acknowledge to the seller the fee they will pay?

How do you confirm to the buyer, the fee you will receive?

How do you inform the buyer of any bonus or additional compensation being offered?

Other Compensation Issues & The Code of Ethics



There are other multiple references to compensation and the receipt of compensation throughout the REALTOR® Code of Ethics:

- Potential for additional or offsetting compensation. **Standard of Practice 1-13**
- Co-operating Commissions prior to accepting offer. **Standard of Practice 3-1**
- Changes in compensation. **Standard of Practice 3-2**
- Disclosure of dual or variable rate commissions. **Standard of Practice 3-4**
- Acceptance of commission from more than one party. **Article 7**
- Use of the term “FREE” regarding compensation. **Standard of Practice 12-1**
- Offering of premiums, prizes and merchandise. **Standard of Practice 12-3**
- Obligations to pay more than one commission. **Standard of Practice 16-14**
- Compensation to licensees affiliated with another. **Standard of Practice 16-15**
- Attempts to modify the commissions of others. **Standard of Practice 16 – 16**

ARTICLE 7

Compensation From More than One Party? Disclose!

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. (1/93)

Article 8

Keep Personal and Client Funds Separated

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

IN WRITING

Article 9

In Writing, In Writing, In Writing!!

***REALTORS®*, for the protection of all parties shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.**

Many categories of verbal contracts are legal and enforceable. However, contracts which sell or convey an interest in real property are required to be in writing in order to be enforceable.

This requirement is imposed in North Carolina due to the Statute of Frauds, General Statute 22-2. The Statute of Frauds was created in England in 1677 and became part of the English Common law. The requirement was imposed to prevent perjury and fraud in the fictitious proof of oral agreements. In North Carolina all of the following are required to be in writing due to the Statute of Frauds:

- Deeds
- Restrictive Covenants
- Easements
- Assignments
- Mortgages
- Options
- Installment Land Contracts
- Leases (Longer Than 3 Years)
- Sales Contracts

As simple as the requirement may appear there are numerous Code of Ethics violations and disciplinary actions based on the failure of the broker to reduce the agreements to writing. The violations often occur relating to addenda, modifications or ancillary agreements relating to extensions or changes in deadlines that occur during the course of a transaction.

Discrimination

Article 10

No Discrimination or Hate Speech

REALTORS® shall not deny equal professional services to any person for reasons of races, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. REALTORS® shall not be parties to any plan to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. (1/14)

Standard of Practice 10-5

REALTORS® shall not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Nov. 13, 2020)

HISTORY

The 1866 Civil Rights Act made discrimination illegal as to race or color with no exceptions. In 1968 the federal Fair Housing Act was passed and contained four protected classes relating to REALTOR® activity:

- **Race**
- **Color**
- **Creed or Religion**
- **National Origin**

In 1974 the protected class of “sex” was added to prohibit discrimination based on male and female gender differences.

In 1988 two protected classes were added by the Fair Housing Amendments to the 1968 law:

- **Handicap / Disability**
- **Familial Status**

In 2014 the National Association of REALTORS® expanded Article 10 of the Code of Ethics to add two more protected classes which are not recognized under federal law but protected under the Code of Ethics:

- **Sexual Orientation**
- **Gender Identity**

On June 15, 2016, the U.S. Department of Housing and Urban Development (HUD) published new inflation adjusted civil penalty amounts for individuals or entities that have been found to have violated a variety of different housing-related laws. Under these revised amounts, someone can be assessed a maximum civil penalty of \$19,787 for his or her first violation of the Fair Housing Act. Respondents who had violated the Fair Housing Act in the previous 5 years could be fined a maximum of \$49,467, and respondents who had violated the Act two or more times in the previous 7 years could be fined a maximum of \$98,935. The violation of federal fair housing laws is both a civil and a criminal offense. Such violations are not typically covered under insurance policies for errors and omissions. Most policies have a specific exclusion for fair housing violations. If there is not a specific exclusion many insurers deny coverage because the violation can be classified as a crime and nearly all error and omissions policies exclude coverage for criminal acts.

The understanding of fair housing is a complex issue and can easily consume a half or full day of study. This material is not intended to be a review of all fair housing issues or a full explanation of federal and state statutes. In these materials we are limiting our discussion of fair housing to

its advertising implications for brokers and to the specific provisions that are contained in the REALTOR® Code of Ethics.

The provisions of both federal and state fair housing laws were really not intended to separate people into differing classes. Every individual is within a protected class of some type. All skin colors, religions and male and female distinctions create protected classes. The prohibitions were designed to address certain types of conduct. The big three are:

Blockbusting – the practice of encouraging sellers to sell based on the changing protected class demographics of a particular neighborhood or area.

Steering – directing people to or away from a neighborhood based on protected class composition.

Redlining – changing the terms or conditions of purchases and financing terms or conditions based on geographical differences that are grounded in protected class composition.

The provisions of Standard of Practice 10-1 were intended to address the specific issue of blockbusting which the Code refers to as “panic peddling.” Nonetheless, REALTORS® do provide demographics that do not reference protected classes.

Firms are also required to prominently display the Fair Housing poster.

REALTORS® are required to use the fair housing logo on all printed ads which are larger than 2” x 2”. HUD defines a printed ad as an advertisement for sale of a residence in a newspaper, magazine or periodical of general circulation. There is no requirement that a broker put the fair housing logo on their business card, brochures, websites, or open house flyers. However, the failure to display and use the logo can be used as evidence in any potential fair housing violation. Therefore, although not required, it is a good idea for licensees to include and use the logo as often as possible.



Article 11

Stay within your Field of Expertise

The services which REALTORS® provide to the clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage, specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property of service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (1/10)

Article 12

Be Honest and Truthful

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are or have been, notified that those communications are from a real estate professional. (1/08)

Advertising and marketing properties is a large component of the duties belonging to brokers. The basic provisions of Article 12 prohibits “the making of any willful or negligent misrepresentation or any willful or negligent omission of a material fact.” brokers have a basic obligation to make certain that their advertising presents a true and accurate picture.

Advertising must be clear that the ad is from a firm or a broker.

The advent of technology and the use of multiple mediums by licensees today includes sites such as Facebook, LinkedIn, YouTube, various websites and internet platforms.

The Code of Ethics clearly addresses all mediums used by today’s REALTORS®. Standard of Practice 1-2 states:

“The duties of the Code of Ethics encompass all real estate related activities and transactions whether conducted in person, electronically, or through any other means.”

There are numerous provisions in the Code of Ethics that were written to apply to today’s technology. Both the Code of Ethics and the North Carolina Real Estate Commission have made it clear that the rules are applicable to all forms of advertising.

Today many MLS systems and brokerages have established electronic syndication feeds that may republish the information concerning a listing to many different sites. It remains the responsibility of the broker to ensure the accuracy of the advertised information on all of these sites, regardless of how the information was syndicated to that particular internet location. Today we are forced to ask ourselves very difficult and pressing questions:

- 1. Do you know where your advertising is located?**
- 2. Have you reviewed it all for compliance?**

How would you answer the following questions?

1. Does your firm name appear on all advertising and sites including the following:
 - Your website ***(Standard of Practice 12-9)***
 - Your Facebook page
 - Your YouTube channel
 - Your Zillow, Trulia and any other advertisement vehicles

2. Does your website also contain your state of licensure? ***(Standard of Practice 12-9)***

3. Is all of the information on your website both current and accurate?
(Standard of Practice 12-8)

4. Is all of the information regarding properties you have listed current and accurate regardless of where it appears on the internet? (i.e. syndicated feeds and multiple listing databases) ***(Standard of Practice 12-8)***

5. Are you only displaying designations, certifications and credentials to which you are legitimately entitled? Are they current? ***(Standard of Practice 12-13)***

The second Standard of Practice of which REALTORS® should be aware of when dealing with domain names is:

Standard of Practice 12-12

REALTORS® shall not:

- 1) Use URL's or domain names that present less than a true picture, or**
- 2) Register URL's or domain names which, if used, would present less than a true picture. (1/08)**

Today any individual could go to domain sites and register a domain name, even if the domain name was the name of another broker, firm or geographic area of practice. Although such conduct may be possible and legal on domain sites, the Code of Ethics holds REALTORS® to a higher standard of conduct. REALTORS® are prohibited under the Code from using domain names which present less than a true picture and are even prohibited from the act of registering such names.

One of the common areas of violation concerns including in a domain name the use of the word "MLS" which is a registered trademark of the National Association of REALTORS® and is not to be included in domain names held by REALTOR® members.



NAR has many rules and regulations which apply to the use of the word REALTOR® in advertising. REALTORS® are encouraged to review the Trademark and Logo guidelines that are published at REALTOR.Org at the following link:

<http://www.realtor.org/letterlw.nsf/pages/TrademarkLogoInternet>

Article 13

Do Not Practice Law

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

Cooperate if Charged

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board of affiliated institute, society or council in which membership is held and shall take no action to disrupt or obstruct such process. (1/99)

In protecting and promoting the interests of the public it is critical that REALTORS® provide a method and manner of effectively and fairly dealing with disputes under the REALTOR® Code of Ethics. The consumer or REALTOR® who has a dispute with a member of the National Association of REALTORS® has three basic options if they feel aggrieved and want to seek remedy or redress:

- 1. Contact a lawyer and pursue litigation.**
- 2. File a disciplinary action or complaint with the North Carolina Real Estate Commission**
- 3. Utilize the dispute resolution methods set up by the National Association of REALTORS®**

Not all brokers are subject to the REALTOR® Code of Ethics. Only REALTORS® are subject to the Code. They are held to the highest ethical standards as outlined by NAR's Code of Ethics and Standards of Practice. The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® may be judged. REALTORS® in joining a Board signify their intention to abide by the Code and

thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers. Each Board is responsible for enforcing the Code of Ethics pursuant to the Bylaws of the National Association. This duty must be discharged conscientiously and responsibly.

Conscientious enforcement is essential if REALTORS® are to be recognized as professionals subscribing to standards of business and ethical conduct higher than those required by law. This duty must be discharged responsibly because of the importance to REALTORS® of their reputation and the esteem of their peers. Membership in a Board of REALTORS® has been recognized by the courts as a valuable property right. Therefore, any action by a Board limiting or denying the rights and privileges of a member must be justified, not only substantively but also procedurally. It is for this reason that failure to accord due process to a REALTOR® accused of a violation of the Code of Ethics can result in the reversal of the Board's decision by the civil courts and can expose the Board and its officers and members to liability for monetary damages and other penalties.

Due process is not a difficult concept, but is an essential one. Due process means nothing more or less than the right to a full and fair hearing before an impartial tribunal with a full and complete knowledge of the charges made and with adequate opportunity to prepare a defense. While the concept of due process is not difficult, its application to specific situations involving enforcement of the Code of Ethics can be troublesome. Therefore, before taking any disciplinary action which may lead to diminution of a member's rights or privileges, it is strongly recommended that the Board's attorney be consulted. Counsel will bring to the proceedings an informed and objective view of the controversy. Moreover, counsel can assure that the due process provided satisfies the requirements of local law. Procedures outlined in the *Code of Ethics and Arbitration Manual* will satisfy most requirements of due process, but the individual differences in the laws of each state will require interpretation and possible supplementation of the process in individual states.



In exercising its responsibility for the enforcement of the Code of Ethics, it is particularly important for the Board to distinguish between controversies which are properly the subject of arbitration and controversies involving the Code of Ethics. The Code of Ethics must not be used as a club or lever to settle business disputes between REALTORS®. For this reason, in complaints involving both charges of unethical conduct and request for arbitration, the dual complaint must be severed and arbitration heard prior to hearing any ethics charges.

The Parties to Complaints

The Board or Association may hear and resolve complaints involving all of the following:

- Client vs. REALTOR®
- REALTOR® vs. Client
- Customer vs. REALTOR®
- REALTOR® vs. Customer
- REALTOR® vs. REALTOR®
- Board vs. REALTOR®
- REALTOR® vs. Board



Ethics Complaints

A violation of the Code of Ethics involves an offense against the Board and its members generally, as distinguished from an arbitration hearing which involves a dispute among two or more members individually, arising from some common transaction involving the rendering of real estate services. For this reason, it is never appropriate for a Board, in an ethics proceeding, to award money damages to another REALTOR®. An ethics proceeding has two essential purposes: education and vindication. It is educational in that it raises the consciousness of members to the meaning and significance of the Code. Many ethics violations occur inadvertently or through ignorance, and the hearing proceeding serves as an effective educational tool. In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge shall read as an alleged violation of one or more Articles of the Code. A Standard of Practice may be cited only in support of the charge. The Preamble is aspirational. Articles 1 through 17 establish specific obligations for which REALTORS® may be disciplined.

Code of Ethics Violation Penalties

The Board has wide latitude in the sanctions which may be applied for violations of the Code of Ethics. It must, however, act responsibly in the application of these sanctions, attempting always to make the punishment commensurate with the offense. Recommendations of Ethics Hearing Panels may range from a mild Letter of Warning to termination of membership as follows in order of severity, provided that such actions are specifically authorized in the Professional Standards procedures of the Board's bylaws:

- (a) Letter of Warning with copy to be placed in member's file;
- (b) Letter of Reprimand with copy to be placed in member's file;
- (c) Requirement that the member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend, taking into consideration cost, location, and duration;
- (d) Appropriate and reasonable fine not to exceed \$15,000 (*Revised 5/13*);
- (e) Membership of individual suspended for a stated period of time not less than thirty (30) days or more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements. The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time

as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed \$15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; *(Revised 11/13)*

(f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); *(Revised 4/96)*

(g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; *(Revised 5/02)*

(h) REALTORS® who are not members of a Board from which they purchase the multiple listing service and their users and subscribers remain obligated under the Code of Ethics on the same terms and conditions as REALTOR® members of that board. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on that Board's members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Revised 4/96)*

Board Officers and Hearing Panels should consult with the Board attorney and refer to the Case Interpretations as well as the Board bylaws and the *Code of Ethics and Arbitration Manual published by the National Association of REALTORS®.*

Article 15

Do Not Make False Statements

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses or their business practices (1/12)

REALTORS® are expected to carry out their professional obligations and duties at a level which maintains the trust and the integrity of the profession. This is particularly true regarding business conduct and the interaction between REALTORS® and their firms. The general obligation of REALTORS® in regard to their interactions is found in Article 15.

There are also federal laws which impose limitations on the business practices of all those engaged in the real estate profession. The commissions which are charged by REALTORS® are freely negotiated between the firm and the client. Neither the North Carolina Real Estate Commission nor the North Carolina REALTORS® attempts to set or regulate fees in any way.

The Sherman Anti-Trust act prohibits REALTORS® from price-fixing. REALTORS® should never in any way act so as to mislead a consumer into believing that there is an average, normal, customary or typical commission. The manner in which commissions are charged varies greatly from firm to firm.

The Sherman Act also prohibits the boycotting of other firms, the allocation of markets between firms and prevents firms from engaging in activities that include unfair business practices. When a REALTOR® makes statements about a competitor's business practices they are treading on dangerous ground. It is always preferable to talk about what you do, not what others may or may not do.

Article 16

Leave Clients of Others ALONE

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 (1/04)

REALTORS® in their solicitation of clients are *always* bound to act within ethical boundaries.
REALTORS® are prohibited from all of the following:

Soliciting the clients of another
Violating the DO Not Call List
Violating the Do Not Fax List
Violating the CanSpam Act

The basic content of Article 16 is to protect the “exclusive relationship” another Broker might have with their client. In North Carolina only *written agreements* create an exclusive relationship.

In understanding and applying Article 16 it is important to understand what **IS** permitted. Article 16 was not intended to prohibit or preclude any of the following:

Aggressive or innovative business practices (SOP 16-1)
General announcements to prospects (SOP 16-2)
General Telephone canvasses, mailings or those in general groups (SOP 16-2)
Offering a different type of service (SOP 16-3)
Offering terms of relisting upon expiration of an existing listing (SOP 16-4)

The provisions of Article 16 allow for solicitation where a listing broker or buyer representative refuses to disclose the expiration date and nature of the employment contract with the client
(SOP 16-4 and 16-6)

Article 17 **Agree to Mediate**

In the event of contractual disputes or specific non-contractual disputes as defined by Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board required its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the client agrees to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award.

(1/12)

Standard of Practice 17-2

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to mediate does not relieve REALTORS® of the duty to arbitrate.

Arbitration Complaints

Requests for arbitration are separate from Code of Ethics complaints. As mentioned earlier, they are usually disputes arising between the parties in regard to the providing of some type of real estate services. Usually, the heart of most arbitration complaints is in regard to fees. Often times they are related to offers of cooperation within the Multiple Listing Service. One of the most common types of arbitrations that Boards may have to deal with involve the issue of procuring cause and the entitlement to fees from cooperating brokers.

In arbitration hearings the Hearing Panel does not usually get involved in Code of Ethics sanctions. In fact, if a Code of Ethics violation is in order it should be handled separately and pursued subsequent to the arbitration. In the arbitration the Hearing Panel has full authority to make an award in any manner which it determines is just and equitable based on the Findings of Fact.

North Carolina REALTORS® conducts arbitrations. You can locate more information on their website at

www.ncrealtors.org

The Role of the Grievance Committee



The first stage of dispute resolution is review of the filed Complaints by a Grievance Committee. The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee is similar to a court. The court adjudicates matters that come before it. The Professional Standards Committee makes decisions on matters involving ethics or arbitration. If the function of the Professional Standards Committee is understood as similar to a court, the function of the Grievance Committee

can then be understood as similar to that of the grand jury. A grand jury evaluates potentially criminal conduct to determine whether the evidence and testimony presented warrants indictment and trial.

In a similar manner, the Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, and it does not decide whether members have violated the Code of Ethics. The Grievance Committee does not mediate or arbitrate business disputes. Grievance Committees are encouraged to hold regularly-scheduled meetings. Meetings should be called often enough to ensure timely review of ethics complaints and arbitration requests.

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s). In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics. ***(See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information.)***

In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s). ***(See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information.)***

If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request.

Grievance Committee's Review of an Ethics Complaint

Upon receipt of an ethics complaint from the Board Secretary, the Chairperson of the Grievance Committee shall review the complaint and any evidence and documentation attached. The Chairperson may assign one or more members of the Grievance Committee to review the complaint and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of if additional information appears necessary to make a knowledgeable disposition of the complaint. The complaint shall be provided to the assigned members by the Board Secretary upon instruction from the Chairperson.

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Secretary to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting.

Factors Considered in Reviewing an Ethics Complaint

In reviewing an ethics complaint, the Grievance Committee shall consider the following:

- (1) Is the ethics complaint acceptable in form as received by the Committee? If not in proper form, the Chairperson may request that the Elected Secretary or the Executive Officer contact the complainant to advise that the complaint must be submitted in proper form.
- (2) Are all necessary parties named in the Complaint?
- (3) Was the Complaint filed within one hundred eighty days (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within 180 days after the conclusion of the transaction, whichever is later?
- (4) Is the respondent named in the Complaint a member of the Board and was the respondent a member of the Board at the time of the alleged offense?
- (5) Is litigation or any government agency investigation or other action pending related to the same transaction?
- (6) Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?

- (7) Are the specific Articles cited in the complaint appropriate in light of the facts provided? Should additional Articles be cited? Should certain Standards of Practice be cited in support of the Articles charged? Are any inappropriate Articles cited?
- (8) If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?

The Grievance Committee after reviewing all relevant facts must make a determination as to the eventual disposition and further handling of the Complaint. The Grievance Committee may:

- 1. Dismiss the Complaint if it does not meet the above criteria, must give Notice to all parties and notify the parties of appeal rights;**
- 2. Refer the Complaint to Mediation**
- 3. Refer the Complaint to the Professional Standards Committee for Arbitration**

The Role & Purpose of Mediation



Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

The Chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee and complaints alleging a violation of the public trust (as defined in Article IV, Section 2 of the NAR Bylaws) may not be mediated.

The ethics mediation process can be initiated in two ways. First is through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing. Where an informal inquiry or general letter of complaint that does not allege a potential violation of the public trust is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator.

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, and the matter(s) complained of do not involve a possible violation of the "public trust", the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable

to all of the parties. In the event the mediator concludes that a potential violation of the public trust may have occurred, the mediation process shall be immediately terminated, and the parties shall be advised of their right to pursue a formal ethics complaint; to pursue a complaint with any appropriate governmental or regulatory body; to pursue litigation; or to pursue any other available remedy.

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the *Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent's action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

Ethics mediators cannot refer concerns they have regarding the conduct of any party to mediation to the Grievance Committee, to the state real estate licensing authority or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. Mediators are, however, authorized to refer concerns that the public trust may have been violated to the Grievance Committee.

Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Guidelines for Mediators

The following guidelines are only suggestions for the mediation conference and are not intended to restrict the flexibility that is necessary for successful mediation. Failure to follow the guidelines does not affect an agreement otherwise acceptable to all parties.

- At the mediation conference, the Mediator advises the parties that the purpose of the conference is to afford them a place to amicably resolve the dispute themselves and thus to avoid an inter-board arbitration hearing where they will have no control over the decision handed down by the arbitrators.
- The Mediator may ask the complainant the nature of the dispute and/or what he/she is claiming, e.g. the dollar amount claimed and the basis for the claim.
- The Mediator may then ask the respondent why he/she feels the claim should be denied.
- The Mediator encourages the parties to discuss the disputed matter(s) and executes control only as needed. Communication between the parties is vitally important and encouraged.
- The Mediator may pull each party into a private discussion or caucus where he/she can note the strengths and weaknesses of each party's argument and discuss these with the parties.
- The Mediator may also point out the alternative to a mediated settlement - arbitration - where the parties have no control over the amount of the award.
- Styles of Mediators may vary. The Mediators will place open communications amongst the parties foremost, thus optimally enabling the parties to craft their own resolution to the dispute.

If the parties agree on a settlement, the Mediator reduces their agreement to writing and has each party sign a Mediation Agreement and Stipulated Arbitration Award. The Association is notified that arbitration will not be necessary.

Procedure Basics of Conducting Arbitration



Part Ten of the Code of Ethics and Arbitration Manual details the procedures for conducting arbitration hearings. Traditionally, and pursuant to the procedures in the Manual, hearings have been conducted by panels of REALTOR® members of the Professional Standards Committee, with a panel chair appointed by the Chair of the committee.

Any of the following four (4) hearing officer options may be adopted locally to supplement the hearing procedures in the Manual. It is important to note

that authorizing use of hearing officers supplements and is not a substitute for the Manual's arbitration hearing procedures.

Local boards/associations electing to implement the hearing officer concept in their arbitration processes will need to choose one of the following:

REALTOR® hearing officer(s) who chairs arbitration hearing panels of the Professional Standards Committee (either as an employee or as a volunteer).

- 1) Staff hearing officer(s) who chairs arbitration hearing panels of the Professional Standards Committee.**
- 2) REALTOR® hearing officer(s) who sits alone and conducts arbitration hearings.**
- 3) Staff hearing officer(s) who sits alone and conducts arbitration hearings.**

Where a board/association routinely utilizes hearing officers (either REALTOR® or staff) sitting alone, complainants and respondents retain the right to have arbitration requests considered by a panel composed of members of the local Professional Standards Committee. Boards and associations have considerable latitude in establishing criteria that hearing officers must satisfy on an ongoing basis.

At a minimum, hearing officers must be thoroughly familiar with the arbitration procedures outlined in the Code of Ethics and Arbitration Manual, state real estate regulations, and current real estate practice. Hearing officers may also be required to periodically complete procedural training determined locally (e.g. seminars conducted by state or national associations, "distance learning" programs, including the Professional Standards component of NAR's Advanced Administrative Concepts program, etc.).

Since enforcement of the Code of Ethics (including dispute resolution pursuant to Article 17) is a duty of the local Professional Standards Committee, hearing officers will act on behalf of and under the supervision of the Professional Standards Committee.

The Burden of Proof

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a “preponderance of the evidence.” Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not. “Clear, strong, and convincing” shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established.

Ethics Complaints
Clear, Strong & Convincing

Arbitration Requests
Preponderance of the Evidence

Defining Arbitrable Issues

As used in Article 17 of the Code of Ethics, the terms “dispute” and “arbitrable matter” are defined as those contractual issues and questions, and specific non-contractual issues and

questions defined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS® and between REALTORS® and their clients and customers.

A Member Board should determine through advice of legal counsel:

- (1) Whether state law permits an agreement to binding arbitration in advance of a dispute or only after the dispute occurs, or;
 - (2) If binding arbitration is not recognized and is thus unenforceable by state law, the Board's arbitration procedures must conform to applicable state law.
- In 2001, Article 17 was amended by the addition of the following paragraph:

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award.

This expansion in the scope of Article 17 does not diminish the personal responsibility of REALTORS® to participate in arbitration. While Article 17 obligates REALTORS® to “. . . cause their firms to arbitrate and be bound by any award . . . ,” it does not confer REALTOR® membership status on real estate firms. Membership, and the duties membership imposes including adherence to the Code of Ethics, is still personal to every REALTOR®.

The change to Article 17 (2012) enhances the dispute resolution process by increasing the availability of arbitration—and the likelihood that awards will be enforceable and paid. In many instances, the disputes giving rise to arbitration under Article 17 relate to contracts between REALTORS®' firms or between REALTORS® acting on behalf of their respective firms. Even where disputes are actually between firms, Article 17 has required that arbitration complainants and respondents be individual REALTORS® (principals), and that awards be rendered in favor of and against individual REALTORS® (principals). In some instances this requirement has resulted in unfair results or rendered the arbitration process impotent because awards were uncollectible. Examples include REALTOR® (principal) respondents leaving the association's jurisdiction, leaving the real estate business, relinquishing their status as a principal in the firm, or being insolvent or “judgment-proof.”

The expansion of Article 17 does not require substantive changes to the way associations of REALTORS® conduct arbitration. It does, however, give both arbitration complainants and respondents greater latitude in determining who the parties are and how any resulting award will be made. For example, a REALTOR® seeking to invoke arbitration could name a REALTOR® (principal) in another firm as the sole respondent; could name multiple REALTORS® (principals) in the other firm as respondents; could name a firm (comprised of REALTOR® principals) as the

respondent; or could name both individual REALTORS® (principals) and their firm as respondents. In this way, the likelihood of the arbitration process being thwarted because a named respondent is no longer subject to an association's jurisdiction before, during or after the arbitration process, or an award being uncollectible, is greatly reduced.

Similarly, individual REALTOR® respondents who want either additional REALTOR® principals or their firms (or both) to be parties to the dispute can file an arbitration request against the original complainants with additional REALTORS® (principals) or the firm (or both) named as complainants. In such cases both claims would be consolidated by the Grievance Committee and all claims would be resolved in a single hearing.

Common Procedural Arbitration Questions

(1) If only an individual REALTOR® (principal) is named as the respondent in an arbitration request, can a Hearing Panel make an award against the respondent's firm?

No. Awards can only be made against named parties in the arbitration request and agreement.

(2) If only an individual REALTOR® (principal) is named as the complainant in an arbitration request, can a Hearing Panel make an award in favor of the complainant's firm?

No. Awards can only be made in favor of parties named in the arbitration request and agreement.

(3) If an award is made against an individual REALTOR® (principal), is it enforceable against the respondent's firm?

Awards are generally enforceable against parties named in the award.

(4) Can I name both a REALTOR® (principal) and his firm as respondents in an arbitration request?

Yes.

(5) What is the advantage to naming both a REALTOR® (principal) and his firm as respondents in an arbitration request?

Naming a REALTOR® (principal) as respondent lets the complainant know who will appear at the hearing, and naming the firm as respondent increases the chances of collecting any resulting award.

(6) If a REALTOR®'s firm is named as the respondent in an arbitration request and refuses to arbitrate, who can be named as respondent in a complaint alleging that Article 17 has been violated?

Any REALTOR® (principal) who holds membership locally or who enjoys MLS participatory rights through the association can be named as respondent.

(7) If only a REALTOR®'s firm is named as respondent in an arbitration request, who is served with notices?

Any REALTOR® (principal) in the firm may be served with notices.

Proper Handling of Documents, Exhibits & Witnesses

Arbitrations are not subject to the very strict evidentiary issues that attorneys and judges face in courtroom procedures. The goal is that all parties will have a right to be heard and be able to freely and fairly represent their positions and may support their positions through the use of their own statements, witness testimony and accompanying documentation.

Generally the arbitrations shall begin with an opening statement by the parties or their respective attorneys which shall briefly outline the basic premise of the parties' positions in respect to the matter being arbitrated.

The complainant may give testimony and present evidence as deemed appropriate to the arbitration by the Hearing Panel. Following presentation by the complainant, the respondent shall testify. The parties shall present to the arbitrators their oral testimony and such written statements and proof as the arbitrators may require. Proof may be by affidavit or other form acceptable to the arbitrators. At the conclusion of testimony by each party, or by a witness, the opposing party and/or his/her counsel may cross-examine the party or witness.

Administrative Time Frames—Arbitration Proceedings

Situation Time Table

Grievance

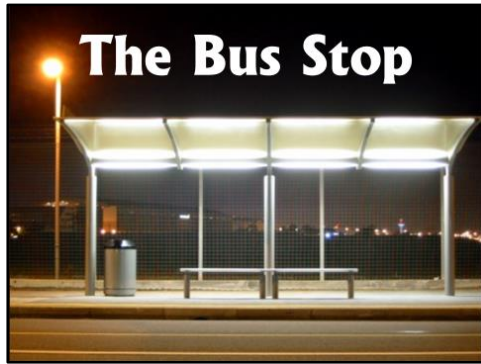
- Request filed 180 days . . .
- Response required/# of days to submit Optional/15 days from transmitting request to respondent if response solicited
- Appeal dismissal to Directors 20 days from transmitting dismissal notice
- Appeal of mandatory vs. voluntary classification 20 days from receipt of decision

Hearing

- Notification to respondent of request 5 days from receipt of Grievance Committee's instruction
- Response required 15 days from transmitting request to respondent
- Challenge forms 10 days to challenge from date forms transmitted
- Panel named 15 days from transmitting challenge forms
- Hearing notice 21 days before hearing
- Arbitration case to panel Board option
- Notice of witnesses and attorney 15 days before hearing to Board and other party

Procedural Review

- Request filed 20 days from transmitting award
- Preliminary review Optional number of days
- Amendment received Within 10 days of notice
- Review held by Directors Next/special meeting giving not less than 10 days notice



The Memorable Lesson of the Bus Stop

An Ethical Conclusion

A seller hired REALTOR® Mary to list her home. The home was located near a bus stop and the REALTOR® Mary noted this proximity as a feature of the home in her advertising. A buyer tendered an offer noting particularly that the home was located near public transportation and indicated to Mary that the bus stop being so close was an important feature in her decision to purchase this home.

After the contract was accepted and prior to closing REALTOR® Mary became aware of the fact that the bus stop would be discontinued and disclosed this material fact to the buyer. The buyer upon learning of this situation expressed a desire to cancel the contract. The seller was informed of the buyer's decision and signed a release of the buyer's earnest money.

The seller later filed an Ethics Complaint against the REALTOR® Mary alleging that the REALTOR® had violated Article 1 of the Code of Ethics in failing to protect and promote the seller's interest. The seller's argument was that REALTOR® Mary was hired to protect them and instead divulged information to the buyer that resulted in the cancellation of a contract.

There are many moving parts to this scenario and many unanswered questions. What result do you think would occur if you were part of this hearing panel?

Answer these questions;

1. When do you think this seller will hire another REALTOR®?
2. Do you think the seller and others with whom they share this story will have less trust in real estate professionals?
3. Do you understand why the seller believed that their own agent had failed to protect and promote their interest?
4. Whose fault is this?
5. What did the agent do wrong?

Is there anything that could have been done to avoid this situation from happening?

