

Code of Ethics

This course is designed to fulfill three hours of continuing education credit in Ethics and Professional Standards of Practice. The objective of this course is to provide students with an overview of the Code of Ethics and Standards of Practice of the National Association of REALTORS® as it applies to the profession of real estate. Additionally, this course seeks to increase understanding of ethical behavior by providing sample scenarios and common illegal practices to guide the practical decision making of licensees.

Chapters:

- Chapter One: What is Ethics?
- Chapter Two: The Code of Ethics and Standards of Practice of the National Association of REALTORS®
- Chapter Three: The Dirty Stuff
- Chapter Four: Common Illegal and Unethical Practices

Learning Objectives:

- Define “ethics” and differentiate among “principles” and “values”
- Define “laws”, “regulations” and “standards” and differentiate from “ethics”
- Distinguish business ethics from personal ethics and give examples of each
- Summarize the history and function of the National Association of REALTORS®
- Identify the main idea of the Preamble
- Distinguish the sections of the Code
- Describe key concepts of each article in the Code
- Assess possible violations of the Code with supporting scenarios
- Discuss enforcement procedures of the Code
- Differentiate between arbitration and mediation
- Identify key parts of Pathways to Professionalism
- Summarize the effect of Fair Housing laws on ethical practice
- Classify illegal practices in relation to Fair Housing laws
- Describe common violations of the Code of Ethics in real estate

Chapter One:

What is Ethics?

Chapter Overview

In our opening chapter we will look at ethics from multiple viewpoints. The term “ethics” will be reviewed in three sets including the relation to values and principles, the relation to standards, regulations and laws, and the subgroups of business and personal. Chapter one will also discuss the history of the National Association of REALTORS® and introduce the Code of Ethics through a brief summary of its structure and function.

Principles, Values and Ethics

Before we get into the bulk of this course, it is first necessary to understand what the term “ethics” actually implies. Many associate the term with “principle” or “value,” however there are important differences among the three.

Merriam Webster defines the terms as the following:

- **Principle:** a comprehensive and fundamental law, doctrine or assumption
- **Value:** something (as a principle or quality) intrinsically valuable or desirable
- **Ethic:** dealing with what is good and bad and with moral duty and obligation

In other words, principles are intellectual and immutable, values are emotional and can change, and ethics are behaviors and actions. See the difference? Now we can move on.

Laws, Regulations, Standards and Ethics

The next series we need to examine is where ethics stand in regards to standards, regulations and laws. Let’s take a quick glance at the definitions of each.

- **Laws:** legal documents setting forth rules governing a particular kind of activity
- **Regulations:** the principles or conditions that customarily govern; authoritative rules
- **Standards:** the ideal in terms of which something can be judged; a basis for comparison; a reference point against which other things can be evaluated
- **Ethics:** the principles of right and wrong that are accepted by an individual or social group; a system of principles governing morality and acceptable conduct

As you can see, the order in which these terms are

presented corresponds to the continuum of concrete to abstract thought. Defining ethics is clearly more complex than defining laws, therefore we can deduce that adhering to ethical conduct is more complex than adhering to laws. After all, can everyone agree on what is right and what is wrong? Absolutely not! However, everyone can agree on whether a law has been broken or not – the lines separating legal and illegal behavior are very bold.

Business Ethics vs. Personal Ethics

The final distinction to be made on this topic is between business and personal ethics. Though the ethical framework exercised in private decisions certainly influences professional behavior, there is again a clear difference which needs attention. Personal ethics reflect general expectations of any person in any society while business ethics reflect required behavior within the context of a professional practice. The following are sample criteria for each set:

Personal Ethics

- concern for the well-being of others
- respect for the autonomy of others
- trustworthiness and honesty
- willing compliance with the law
- being fair
- refusing to take unfair advantage
- doing good
- preventing harm

Business Ethics

- impartiality and objectivity
- openness and full disclosure
- confidentiality
- due diligence and duty of care
- fidelity to professional responsibilities
- avoiding potential or apparent conflict of interest

The National Association of REALTORS®

The National Association of REALTORS®, commonly referred to as NAR, was founded in 1908 in Chicago, IL. Under the name of The National Association of Real Estate Exchanges, the 120 founding members’ 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.”

Before changing the group’s name to The National Association of Real Estate Boards in 1916, the Code of

Ethics was adopted in 1913 with the Golden Rule at its foundation. In 1949, REALTOR® was approved by the Patent and Trademark Office.

The formal name of the organization was changed one final time in 1974 to its current title and has since become a substantial trade association with over 850,000 members, 54 State Associations and more than 1,500 local Associations.

The National Association of REALTORS® offers valuable member services including access to Information Central, a one-stop shop for membership records, a 15,000+ volume library and customer service, and discounts on several products and services for business and home. Further, since its inception, the organization has held a vital role in keeping and conducting property value statistics and research. In 1968, the monthly Existing Home Sales report was started, serving as a valued indicator of the United States' economic health.

NAR has made its mark in international circles as well, as it helped form the International Real Estate Federation (FIABCI) in the early 1950s. Since then, the group has been actively involved in housing and property rights forums the world over.

(2010, National Association of REALTORS®, <http://www.REALTOR.org/REALTORorg.nsf/pages/NAROverview?OpenDocument>)

Structure of the Code

The Code of Ethics provides a comprehensive view of unethical situations and is structured according to three sections with articles and standards of practice. The articles are general statements supported by standards which outline specific behaviors. Overall, the NAR Code of Ethics:

- Protects the buying and selling public
- Promotes a competitive real estate marketplace
- Enhances the integrity of the industry
- Is your promise of performance
- Is your promise of professionalism

To view the full text of the Code of Ethics, see <http://www.realtor.org/mempolweb.nsf/pages/code>.

Chapter Two: The Code of Ethics and Standards of Practice of the National Association of REALTORS®

Chapter Overview

Our second chapter will examine the NAR Code of Ethics in detail. Each article will be given and we will provide some situations describing unethical conduct in order to provide students with real-life examples of how the Code should be applied. In addition, we will point out the articles that are most commonly cited in ethics complaints.

Introduction

REALTOR®: *a person who works in the real-estate business and is a member of the National Association of Real Estate Boards, or one of its constituent boards, and abides by its Code of Ethics.*

Realtor/real estate agent: *a person who is authorized to act as an agent for the sale of land.*

Disclaimer: This course is designed and intended for the general population of realtors/real estate agents and not solely for REALTORS®. The information within this chapter is taken directly from The Code of Ethics and Standards of Practice of the National Association of REALTORS® and should not be interpreted as original work of McKissock, LP unless otherwise footnoted.

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

*denotes articles commonly the subject of ethics complaints

The Preamble

The Preamble to the Code of Ethics is its inspirational foundation because its principles are ideals toward which REALTORS® should strive:

- Honesty

- Integrity
 - Fairness
 - Moral Conduct in Business Relations
- The Preamble begins with the inspiring words of “Under all is the land....” These words represent the all-encompassing nature of the field, as land is the foundation of many aspects of society. As one of society’s most important commodities, the foundation of land accounts for simple necessities such as food and shelter, as well as more complex aspects such as economy and prosperity. Overall, the profession of real estate is very important from the ground up, literally!

The Golden Rule

When reading the full text of the NAR Code of Ethics and Standards of Practice, one can readily determine that the Golden Rule is a core element of its foundation. As stated in the final paragraph of the Preamble, the entire code refers to the simple premise of “whatsoever ye would that others should do to you, do ye even so to them.” In other words, treat others like you would like to be treated.

Duties to Clients and Customers

Article 1*

When representing a buyer, seller, landlord, 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 REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics.

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

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics:

- “client” means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®’s firm has an agency or legally recognized non-agency relationship;
- “customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®’s firm;
- “prospect” means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®’s firm;
- “agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and
- “broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity.

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®’s services.

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties.

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible.

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease.

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation

to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated.

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- reveal confidential information of clients; or
- use confidential information of clients to the disadvantage of clients; or
- use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
 - clients consent after full disclosure; or
 - REALTORS® are required by court order; or
 - it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
 - it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics.

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises.

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses.

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant

agents, and/or brokers acting in legally recognized non-agency capacities;

- the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- any potential for listing brokers to act as disclosed dual agents, e.g. buyer/tenant agents.

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- the REALTOR®'s company policies regarding cooperation;
- the amount of compensation to be paid by the client;
- the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc., and
- the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation.

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker.

Article 2*

- Avoid exaggeration, misrepresentation, or concealment of pertinent facts about property or transactions
- More than simply the disclosure of property defects is required
- REALTORS® are not expected to be experts in all areas or fields and are not obligated to:
 - Discover latent (hidden) defects
 - Advise on matters outside the scope of their real estate license
 - Disclose facts which are confidential under agency or non-agency relationships

- Obligation to discover and disclose adverse factors but only within areas required by the real estate licensing authority
- Do not recite as false consideration in documents (except where obviously nominal)
- If state law defines a matter as “non-material” or not subject to disclosure, the matter is not “pertinent” under this article

Article 3

- Cooperate with other brokers except when it is not in the client’s best interest
- Obligation does not include sharing commissions, fees or other compensation

Realtors acting as exclusive agents or brokers of sellers or landlord must:

- Establish the terms and conditions of offers to cooperate including compensation
- REALTORS® timely communicate any change of compensation prior to an offer to purchase/lease the property
- Listing brokers and cooperating brokers may enter into an agreement to change cooperative compensation
- REALTORS® acting as listing brokers have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements
- Subagents promptly disclose all pertinent facts to the principal’s agent before and after purchase/lease agreements are executed
- REALTORS® disclose the existence of accepted offers including unresolved contingencies to any broker seeking cooperation
- REALTORS® when seeking information about a property disclose their status and whether their interest is personal or their representational status with a client
- REALTORS® do not misrepresent the availability of access to show or inspect a listed property
- Not provide access to listed property on terms other than those established by the owner or listing broker

The duty to cooperate established in this Article relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective buyers/tenants when it is in the best interests of the sellers/landlords.

Article 4

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 any ownership interest, any real property without making their true position known to the owner or the owner’s agent or broker. REALTORS® in selling property they own reveal their ownership in writing to the purchaser

For the protection of all parties disclosures appear in writing and provided prior to the signing of any contract

Article 5

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 6

Realtors shall not:

- Accept any commission, rebate or profit on client expenditures without client’s knowledge and consent

When recommending real estate products or services (e.g., homeowner’s insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®’s firm may receive as a direct result of such recommendation Do not recommend services of another business entity of direct interest without disclosure at time of recommendation

Example of Violation

Chloe’s company offers a homeowners warranty at the time of listing. Because her company gives a cash rebate if she sells the policy, Chloe works hard to get her sellers to purchase the \$400 plan.

Article 7

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.

Article 8

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.

Article 9*

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.

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments.

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party.

Duties to the Public

Article 10

REALTORS® shall not deny:

- Equal professional services to any person for reasons of:
 - Race
 - Color
 - Religion
 - Sex
 - Handicap
 - familial status
 - national origin
 - sexual orientation

REALTORS®, in their real estate employment practices, shall not discriminate against any person on the basis of race, color, religion, sex, handicap, familial status, national origin or sexual orientation.

NOTE: NAR added “sexual orientation” as a protected class to its Code of Ethics at the Annual Convention in 2010.

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information.

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail.

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin or sexual orientation.

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate relate services and the administrative and clerical staff directly supporting those individuals.

Article 11

The services which REALTORS® provide to their 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
- Real estate appraisal
- Real estate counseling
- Real estate syndication
- Real estate auction
- International real estate

REALTORS® undertake no specialized professional services unless competent assistance is sought and

contribution disclosed

- Opinions of real property include property identification, date prepared, defined value or price, limiting conditions, any present or contemplated interest, basis for opinion including applicable market data, and if not appraisal, a statement to that effect
- Advice rendered in objective manner and fee not be contingent on the substance of the advice or counsel given

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

1. identification of the subject property
2. date prepared
3. defined value or price
4. limiting conditions, including statements of purpose(s) and intended user(s)
5. any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
6. basis for the opinion, including applicable market data
7. if the opinion is not an appraisal, a statement to that effect

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary.

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®.

The competency required by Article 11 relates to

services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation

Example of Violation

Broker Jeff manages a large office. He gets a call from an out-of-town executor handling the real estate of a former resident of Jeff's area. The executor wants advice in pricing and marketing two pieces of vacant land owned by the deceased. Jeff doesn't sell much anymore, but gives a quick guess of \$18,000 per lot over the phone. He knows the area is a rapidly growing one. He gets the listings, puts them in the MLS, and sells both lots within 10 hours of the MLS appearance.

Article 12*

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.

REALTORS® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time.

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice.

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing

brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. REALTORS® use reasonable efforts to ensure that information on their websites is current.

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner. This Standard of Practice acknowledges that disclosing the name of the firm may not be practical in electronic displays of limited information (e.g., “thumbnails”, text messages, “tweets”, etc.). Such displays are exempt from the disclosure requirement established in this Standard of Practice, but only when linked to a display that includes all required disclosures.

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees.

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker.

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®' websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action.

REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner.

REALTORS®' obligation to present a true picture in their advertising and representations to the public

includes the URLs and domain names they use, and prohibits REALTORS® from:

1. engaging in deceptive or unauthorized framing of real estate brokerage websites;
2. manipulating (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or
3. deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers.

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner.

REALTORS® shall not:

1. use URLs or domain names that present less than a true picture, or
2. register URLs or domain names which, if used, would present less than a true picture.

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled.

Example of Violation

Percy just got his broker's license and is out on his own. He is having trouble getting listings. After talking to a FSBO who told Percy that if he brought a buyer the owner would pay him, Percy went right back to the office and used the FSBO property in his advertising in the hopes that the phone would ring.

Article 13

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

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 or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes.

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event.

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review.

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal.

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction.

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints.

The obligation to refrain from making false or misleading statements about competitors, competitors' businesses and competitors' business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means.

The obligation to refrain from making false or misleading statements about competitors, competitors' businesses, and competitors' business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is

false or misleading.

Article 16*

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.

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses.

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard.

Article 16 is intended to recognize as unethical two basic types of solicitations:

- First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and
- Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation.

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements.

However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made.

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement.

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business.

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement.

REALTORS®, prior to entering into a representation

agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease.

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement.

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact.

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement.

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects.

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with

their informed consent.

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation.

REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker.

REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers.

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord.

REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements.

Example of Violation

Alice was so excited about writing her first offer for her buyer to purchase another company's listing that she hopped into her new Lexus and drove immediately to the seller's home to present the offer herself before her buyer changed his mind.

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

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.

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board.

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary.

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the

complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction.

- Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction.
- Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction.
- Where two or more listing brokers claim entitlement

to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers.

- Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed.

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists.

EXPLANATORY NOTES:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

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Chapter Three:

The Dirty Stuff

Chapter Overview

In this chapter we will review why the Code of Ethics should actually be followed, aka the enforcement of the Code. The differences in types of complaints and the resulting procedures will be summarized, as well as the difference between arbitration and mediation. The chapter will conclude with Pathways to Professionalism, a handy guide to behaving in a courteous manner in real estate transactions.

Enforcement of the Code of Ethics

The Articles of the Code are objective standards by which REALTORS® conduct is measured. Though the Professional Standards Committee and Board of Directors of the NAR adopt and modify the Code, enforcement is primarily done by local Associations. Some state associations of REALTORS® process complaints on behalf of local groups by agreement, however, for purposes of this course, we will assume that the local Board or Association of REALTORS® process ethics complaints and conducts all of the enforcement activities.

Two Types of Complaints

Ethics

- Whether one or more of the Articles have been violated
- “Conduct” complaint
- Can be filed by anyone, general public or REALTOR®
- Must be filed within 180 days of when the facts of the complaint could have been known by the complainant

Grievance Committee

- Initial screening or review
- Whether respondent is member of local association and whether complaint filed in established time limits
- Determines whether there was a possible violation of the Code
- If no possible violation, complaint is dismissed
- If possible violation, complaint passed on to Professional Standards Committee

Professional Standards Committee

- Holds ethics hearings on complaints forwarded by the Grievance Committee

- Hearing panels provide respondents with a “due process” hearing
- Must find that there is “clear, strong and convincing” proof that a violation has occurred to find a REALTOR in violation of the Code
- Must recommend discipline* that will be imposed

* “Discipline” means discipline of the REALTOR®’s membership only, not action against the individual’s real estate license - Authorized discipline includes letter of warning, letter of reprimand, education, fine not to exceed \$5000, probation for one year or less, suspension for not less than 30 days or more than one year, expulsion from membership for a period of one to three years, or suspension or termination of MLS privileges.

Arbitration

- “Money” complaint
- Can only be filed by certain members in certain circumstances
- Must be filed within 180 days of transaction closing or 180 days from when the facts of the request could have been known by the complainant
- Three conditions define disputes which can be arbitrated
 - Must be contractual or non-contractual between cooperating brokers with a commission dispute
 - Must be between REALTORS® (principals) associated with different firms or between REALTORS® in the same firm if all parties agree (voluntary)
 - Must arise out of the parties’ relationship as REALTORS®

Grievance Committee

- Addresses procedural issues (membership, timely basis of filing)
- Determines if there is a basis for arbitration
- If no basis, request dismissed
- If basis, request passed on to Professional Standards Committee

Personal Standards Committee

- Uses hearing panels to decide which party is entitled to the disputed funds by conducting a full “due process” hearing
- Prevailing party must prove they are entitled to the disputed funds by a “preponderance” of the evidence aka “greater weight of the evidence”
- Arbitration award can be enforced by the courts

Before You File an Ethics Complaint

Background

Boards and associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply only to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local board or association of REALTORS®. Many boards and associations have informal dispute resolving processes available to consumers (e.g. ombudsmen, mediation, etc.).

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only REALTORS® and REALTOR-ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.
- Boards and associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. REALTORS® may also be reprimanded, fined, or their membership can be suspended or terminated for serious or repeated violations. Boards and associations of REALTORS® cannot require

REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license.

- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Filing an Ethics Complaint

The local board or association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local board or association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place (unless the Board's informal dispute resolution processes are invoked in which case the filing deadline will momentarily be suspended).
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the Articles of the Code of Ethics which may have been violated. Hearing panels decide whether the Articles expressly cited in complaints were violated - not whether Standards of Practice or case interpretations were violated.
- The local board or association of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

Before the Hearing

- Your complaint will be reviewed by the local board or association's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your

complaint, it does not mean they don't believe you. Rather, it means that they do not feel that your allegations would support a hearing panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.

- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the hearing panel, that panel may have reason to find that a violation of the Code of Ethics occurred.
- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the board of directors of the local board or association of REALTORS®.

Preparing for the Hearing

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.
- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as, ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.
- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege - not a right.
- Be sure you have all the documents and other evidence you need to present your case.
- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened and how you believe the Code of Ethics was violated.

At the Hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually

occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.

- Hearing panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.
- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but didn't), and how the facts support a violation of the Article(s) charged in the complaint.
- Hearing panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.
- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently doesn't mean they aren't telling the truth as they recall events. It is up to the hearing panel, in the findings of fact that will be part of their decision, to determine what actually happened.
- The hearing panel will pay careful attention to what you say and how you say it. An implausible account doesn't become more believable through repetition or, through volume.
- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

After the Hearing

- When you receive the hearing panel's decision, review it carefully.
- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.
- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be involved. The fact that a hearing panel found no

violation is not appealable.

- Refer to the procedures used by the local board or association of REALTORS® for detailed information on the bases and time limits for appealing decisions or requesting a rehearing. Rehearings are generally granted only when newly discovered evidence comes to light (a) which could not reasonably have been discovered and produced at the original hearing and (b) which might have had a bearing on the hearing panel's decision. Appeals brought by ethics respondents must be based on (a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics, (b) a procedural deficiency or failure of due process, or (c) the nature or gravity of the discipline proposed by the hearing panel. Appeals brought by ethics complainants are limited to procedural deficiencies or failures of due process that may have prevented a full and fair hearing.

Conclusion

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, the local board or association of REALTORS® can give you the procedures and forms necessary to file an ethics complaint.

Mediation

Mediation is when both parties agree to meet with a neutral third-party, called a mediator, to help them resolve their dispute. The goal of mediation is to resolve a dispute without having to go through the legal process of arbitration. REALTORS® are increasingly relying on mediation to resolve disputes that in the past would have been arbitrated.

When a dispute is successfully resolved through mediation, no arbitration hearing is necessary. A successful result would be one in which both parties sign an agreement spelling out the terms of their settlement. Depending on the policy of your Association, mediation may be offered before or after the Grievance Committee has reviewed an arbitration request. Mediation can also be offered without a request for arbitration being filed.

Pathways to Professionalism

While the Code of Ethics and Standards of Practice

of NAR establishes objective, enforceable ethical standards governing the professional conduct of REALTORS®, it does not address issues of courtesy or etiquette. Based on input from many sources, the Professional Conduct Working Group of the Professional Standards Committee developed the following list of professional courtesies for use by REALTORS® on a voluntary basis. This list is not all-inclusive, and may be supplemented by local custom and practice.

Respect for the Public

- Always follow the “Golden Rule”
- Always respond promptly to inquiries and requests for information
- Schedule appointments as far in advance as possible; call if you are delayed or must cancel an appointment
- Always schedule property showings in advance
- If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the owner
- Communicate with all parties in a timely fashion
- Enter listed property first to ensure that unexpected situations, such as pets, are handled appropriately
- Leave your business card if not prohibited by local rules
- Never criticize property in the presence of the owner
- Inform sellers that you are leaving after a showing
- When showing an occupied home, always ring the doorbell or knock before entering. Knock before entering any closed room
- Present a professional appearance at all times; dress appropriately and have a clean car
- If the seller is home during a showing, ask their permission before using the telephone or bathroom
- Advise the clients of other brokers to direct questions to their agent or representative
- Communicate clearly; don't use jargon not readily understood by the general public
- Be aware of and respect cultural differences
- Show courtesy and respect to the general public
- Be aware of and meet all deadlines
- Promise only what you can deliver and keep your promises

Respect for Property

- Be responsible for visitors to listed property; never allow buyers to enter property unaccompanied
- When the seller is absent, be sure to turn off lights,

- shut windows, and lock doors after a showing
- Tell buyers not to smoke in listed property
- Use sidewalks; if weather is bad, take off shoes and boots inside property
- When a property is vacant, check that heating and cooling controls are set correctly and check the outside of the property for damage and vandalism

Respect for Peers

- Call the listing broker to report the results of any showing
- Notify the listing broker immediately if anything appears wrong with the property
- Notify the listing broker if there appears to be inaccurate information on the listing
- Share important information about a property, including the presence of pets; security systems; and whether sellers will be present during the showing
- Show courtesy, trust and respect to other real estate professionals

Chapter Four: Common Illegal and Unethical Practices

Chapter Overview

In this chapter we will review common unethical or illegal practices in the real estate industry. Chances are, you have been an observer of these acts, but we included them here for your reference. It is important to remember, your reputation as a professional always precedes you, so it is best to display high integrity in all business transactions.

Introduction

The Code of Ethics provides real estate professionals with guidelines of acceptable conduct in all business transactions. With the Golden Rule at its foundation, the Code expects licensees to be exemplary models of competency, fairness and high integrity. In the event these obligations are not met, enforcement procedures take the form of disciplinary action.

Unfortunately, in highly competitive markets such as ours, dishonesty in dealings is a common practice. Brokers and salespeople alike display greed for “getting ahead” and often rationalize blatant lies as

partial truths. Dishonesty takes many forms and can be cleverly masked to the untrained eye. The final portion of this course seeks to increase your understanding of common deceitful practices in the real estate industry. As you will learn, some practices are not only unethical, but illegal as well.

Fair Housing Laws

Note: The information contained in this section is extracted from our course, Fair Housing, authored by Mr. Alan Simmons

The Fair Housing Act of 1968 was the first major legislation that applied to residential housing. The Fair Housing Amendments Act of 1988 broadened the coverage, increased the enforcement policies of the Act and stiffened the penalties invoked for violation of the Act.

Title VIII of the Civil Rights Act of 1968

Also known as the Fair Housing Act, Title VIII prohibited discrimination in most types of housing on the basis of:

- Race
- Color
- Religion
- National Origin

In 1974, Congress passed the Housing and Community Development Act, which added “sex” as another prohibited basis for discrimination. This prohibited sexual harassment, but not discrimination for sexual orientation. Though federal laws do not cover discrimination based on sexual orientation, the following states have passed laws that provide some form of civil rights protection for gay, lesbian, bisexual or transgender individuals:

- California
- Connecticut
- District of Columbia
- Florida
- Illinois
- Maryland
- Massachusetts
- Minnesota
- New Hampshire
- New Jersey
- New Mexico
- New York
- Rhode Island
- Vermont
- Wisconsin

Fair Housing Amendments Act of 1988

The major changes came 20 years later in the Fair Housing Amendments Act of 1988, which added protected status to families with children and persons with physical or mental handicaps. It also added new enforcement procedures.

The Fair Housing Act prohibits discrimination in housing because of:

- Race or color
- National origin
- Religion
- Sex
- Familial status
- Handicap

The following are specific actions that are prohibited under the Fair Housing Act:

- Refusal to rent or sell housing or to negotiate for housing
- Making housing unavailable or denying a dwelling
- Setting different terms, conditions or privileges for sale or rental of a dwelling or in the provision of different housing services or facilities
- Falsely denying that housing is available for inspection, sale or rental
- For profit, persuading owners to sell or rent (blockbusting)
- Discriminating in residential real-estate related transactions
- Denying anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing
- Threatening, coercing, intimidating or interfering with anyone exercising a fair housing right or assisting others who exercise that right.

Steering/Channeling

Steering, also called channeling, is the illegal practice of directing home seekers to particular areas because of minority status, either to maintain the homogeneity or change the character of an area. This practice is in direct violation of Fair Housing laws, as it limits peoples' home choices. Article 10 of the Code of Ethics is also violated, as real estate professionals are expected to provide equal services to all parties.

Example

Licensee Laura has an appointment to show Jose and Maria a house in an established, upper-middle class suburb. Upon meeting the young couple, she quickly

concludes they are not the sort of buyers the sellers were hoping to have. Instead, the sellers expressed wishes to sell their home to a well-to-do retired couple that would "fit-in" with their beloved neighbors. Licensee Laura coyly suggests looking at a few properties closer to the city, as it turns out, in ethnic neighborhoods. Jose and Maria cooperatively concur. Licensee Laura has engaged in steering.

Blockbusting/Panic Peddling

Blockbusting, also called panic peddling, is the illegal and discriminatory practice of inducing another into a real estate transaction by making representations of the entry, or prospective entry, of members of a minority group. By representing that a change may occur, resulting in decreased property values, a decline in the quality of schools or an increase in the crime rate, a real estate professional is directly violating Fair Housing laws. Further, blockbusting is a violation of Article 2 of the Code of Ethics, as it involves misrepresentation.

Example

Dave and Christy, a young couple with a child, are owners of a small urban home, where they have lived since they were married. In anticipation of expanding their family, they consider selling their home to purchase a larger property outside of the city. They consult with Broker Bob, who immediately lets them in on a "secret" about their current neighborhood. To their surprise, "there has been an influx of African Americans, and crime statistics have risen dramatically in the last eight months." As a feeling of panic sets in, Dave and Christy decide, in a matter of minutes, that it is definitely time to sell their first home. Broker Bob has just engaged in blockbusting.

Redlining

Redlining is a practice by some lending institutions that restricts the number of loans or the loan-to-value ratio in certain areas of a community. A redlining policy may be so severe that the lender prohibits lending any money in certain areas. Redlining is often justified by wanting to limit the risks in an area that is deteriorating. The lender discriminates against a whole class of risks rather than distinguishing among individual risks.

This practice can also be seen in a different light, as the illegal practice of refusing to originate mortgage loans, or limiting their number, in certain neighborhoods on the basis of racial or ethnic composition. This sort of motivation is in direct violation of Fair Housing laws.

Article 10 of the Code of Ethics is also violated, as real estate professionals are expected to provide equal professional services.

Example

Hipple and Associates, a local mortgage lender, has received an application from a Russian family for a loan to purchase a house on the East Side of town. The East Side has been deteriorating for several years, and Hipple and Associates has limited the number of mortgage loans for that area in response to decreased property values and in turn, decreased profit margins. The Russian family is denied, and Hipple and Associates is guilty of redlining.

Puffing

Puffing, also known as puffery, consists of non-factual or extravagant statements and opinions made to enhance the perceived desirability of a property. There is a fine line between legal puffing and illegal misrepresentation, and puffing is best avoided.

The term “caveat emptor,” also comes to mind when discussing puffing. This term literally means “let the buyer beware” in Latin and suggests that buyers should inspect property before a purchase is made, regardless of what a sales professional may or may not say.

Example

“The apartment has a fantastic view” is puffery because the prospective buyer can clearly assess the view individually. “The apartment has a fantastic view of the lake,” when in fact all windows face a parking lot, would be illegal misrepresentation. Either way, the Code of Ethics is broken, as Article 2 prohibits exaggeration and misrepresentation of pertinent facts about property or transactions.

Commingling

Commingling is the illegal practice of mixing client’s deposits or monies (trust funds) with one’s own funds. By law, brokers are required to maintain a separate trust or escrow account for other parties’ funds held temporarily by the broker. Commingling is also a direct violation of Article 8 of the Code of Ethics, which requires licensees to keep all monies for other persons separate from their own funds in a special account such as escrows. **Example**

Salesperson Stephanie receives an earnest money check for \$1000 from Buyer Bill for a home on Crescent Avenue. Stephanie, who has an outstanding credit card

balance of \$890, decides to deposit the money into her own checking account to pay her bill until she can recover the money from her next paycheck for deposit into the escrow account. Though she has good intentions to repay the money, Stephanie has commingled funds.

Pocket Listing

Pocket listing is when an agent lists a property for sale and does not enter it into the MLS system for several days, keeping it in his “pocket” so other agents will not know the property is for sale. This practice allows the agent to show the listing to his customers without competition from other buyers. In the meantime, the seller is unaware that the property is being offered to only the agent’s buyers and may accept a lower offer than they would have gotten if the property had been exposed to ALL buyers. Pocket listing can be avoided by specifying that the listing agent provide the seller with the MLS ID number within 24 hours of listing the property.

Example

Agent Alan has received notice that the Vanderbilt family is relocating and their massive and luxurious home is for sale. Agent Alan has three wealthy clients on a waiting list for openings in the Vanderbilt’s neighborhood and decides to show the property only to them for the first several days. In order to provide this sort of exclusivity for these clients, he delays entering the Vanderbilt home into the MLS system until he has received word from all three families on their intentions. Agent Alan has unethically pocket listed the Vanderbilt home.