

The REALTORS® Code of Ethics

New Member
Orientation Program

Icebreaker Exercise

The instructor will tell you how to form groups. In your group, you should:

1. Introduce yourselves if you do not already know each other.
2. Select a spokesperson.
3. Answer this question: What are “ethics?” Consider the question in all facets of life and business, not just the real estate business. Use the space below to record your notes and observations.

What are “ethics?”

1.

2.

3.

4.

5.

NOTES

Part 1: History and Background of the Code of Ethics

- National Association of REALTORS® formed in 1908.
- No license laws at the time.
- Real estate industry had a history of speculation, exploitation, and disorder.
- Code of Ethics was adopted in 1913 to establish a professional standard of conduct.
- Code of Ethics formed the basis for license laws.
- From its inception, the Code of Ethics required arbitration of monetary disputes between REALTORS®.

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Part 2: The Preamble and Structure of the Code of Ethics

- I. Aspirational Concepts of the Preamble of the Code of Ethics
 - A. Under all is the land ...
 - B. The Golden Rule.
 - C. “Widely allocated ownership” and “widest distribution of land ownership”
 - D. Maintain and improve the standards of their calling.
 - E. Share with fellow REALTORS® a common responsibility for the integrity and honor of the real estate profession.
 - F. Strive to become and remain informed on issues affecting real estate.
 - G. Willingly share the fruit of your experience and study with others.
 - H. Identify and take steps to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession.
 - I. Urge exclusive representation of clients.
 - J. Do not attempt to gain any unfair advantage over competitors.
 - K. Refrain from making unsolicited comments about other practitioners.
 - L. If an opinion is sought about a competitor (or the REALTOR® believes comment is necessary), the opinion should be offered in an objective, professional manner.
 - M. The term REALTOR® stands for competency, fairness, high integrity, moral conduct in business relations.
 - N. No inducement of profit and no instruction from clients can justify departure from these ideals.

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II. "Business ethics"

A. What are "business ethics?"

1. Industry codes
2. Company policies
3. Individual moral values

B. Business ethics and legal standards

C. Business ethics and the REALTORS® Code of Ethics

Note: REALTORS® engage in many specialty areas and may be subject to the various Codes and Canons of those fields (e.g. legal ethics, USPAP, NAA Code, the code of the NAR Institutes, Societies, and Councils, etc.) but the one duty every REALTOR® has in common is their adherence to the REALTORS® Code of Ethics.

III. The Structure of the Code of Ethics

A. The three major sections

1. Duties to Clients and Customers
2. Duties to the Public
3. Duties to REALTORS®

B. Articles – broad statements of ethical principles.

C. Standards of Practice – support, interpret, and amplify the Articles under which they are stated.

D. Case Interpretations – specific fact situations to which the Articles and/or Standards of Practice are applied.

E. Only Articles of the Code can be violated, though Standards of Practice can be cited in support of an alleged violation.

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III. Pathways to Professionalism – list of service criteria for the industry and professional courtesies for use by REALTORS® on a voluntary basis.

A. The three major sections

1. Respect for the public
2. Respect for property
3. Respect for peers

Pathways to Professionalism Exercise:

The instructor will break everyone into groups. You will be given a copy of Pathways to Professionalism and asked to identify the three areas that relate to your market. A spokesperson for the group will summarize the discussion.

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Part 3: Enforcement of the Code of Ethics

I. Ethics Cases and Arbitration Cases

- A. Ethics - Basic Issue - Is there a possible violation of the Code of Ethics?
- B. Arbitration - Basic Issue - Is there an arbitrable issue, that is, a money dispute (typically a dispute over which REALTOR® is entitled to the cooperative commission in a transaction)?

II. The Ethics Enforcement Process

- A. Filing a Complaint - Who can file a complaint?
- B. The Grievance Committee
 - 1. A screening committee comprised of members of the Association appointed to the committee.
 - 2. Key question for the Grievance Committee is: "If the allegations in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?"
- C. The Professional Standards Hearing Panel
 - 1. Function is to conduct a full "due process" hearing with sworn testimony, witnesses and evidence.
 - 2. Hearing Panel is comprised of members of the Professional Standards Committee.
 - 3. After conducting a hearing, the Hearing Panel decides whether there was a violation of the Code of Ethics, proven by clear, strong and convincing proof.
 - 4. If the Hearing Panel finds a violation of the Code of Ethics, the Panel then determines the discipline to be imposed on the violator (respondent).

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- D. Authorized Discipline and Administrative Processing Fee
 - 1. Letter of Warning
 - 2. Letter of Reprimand
 - 3. Education
 - 4. Fine not to exceed \$15,000
 - 5. Probation for one year or less
 - 6. Suspension for not less than 30 days nor more than one year
 - 7. Expulsion from membership for period of one to three years
 - 8. Suspension or termination of MLS privileges.
 - 9. Cease or refrain or take steps to ensure Code compliance

Note: An administrative processing fee (if found in violation) is not to exceed \$500 (“court costs”). An administrative processing fee is not considered discipline. It is charged as part of the association’s adopted policy for enforcing the Code of Ethics. This is not to be used on a case-by-case basis, but rather as an overall policy of the association.

III. The Arbitration Process

- A. Request filed.
 - 1. Arbitration is conducted under Article 17 of the Code of Ethics and the state arbitration statute (if any).
 - 2. Article 17 provides that arbitration occurs under the following circumstances:
 - a. Contractual disputes or specific non-contractual disputes (see Standard of Practice 17-4);
 - b. Between REALTORS® (principals) associated with different firms;
 - c. Arising out of their relationship as REALTORS®
- B. Grievance Committee
 - 1. Committee performs a screening function similar to review of ethics complaints.
 - 2. Key question for the Grievance Committee is: “If the allegations in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e. is there some basis on which an award could be based?”

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C. Mediation

1. A voluntary process in which disputing parties meet with a mediator appointed by the Association to create a mutually acceptable resolution of the dispute, rather than having a decision imposed by an arbitration hearing panel.
2. Mediation can occur before or after the Grievance Committee reviews requests for arbitration, depending on local Association policy.
3. If a dispute is resolved in mediation, the parties sign an agreement spelling out the terms of the settlement, and no arbitration hearing is held.
4. Comparison of mediation and arbitration

Mediation	Arbitration
Low-cost	Moderate cost
Little delay	Moderate delay
Maximum range – solutions	Win/lose/split
Parties control outcome	Arbitrators control outcome
Uncertain closure	Definite closure
Maintain/improve relationship	May harm relationship

D. Additional reading about mediation:

1. “No losers in Mediation”
2. “Win/win Solution”

E. Professional Standards hearing panel

1. Function is to conduct a full “due process” hearing with sworn testimony, counsel, witnesses and documentary evidence.
2. Hearing panel consists of members of the Professional Standards Committee.
3. After the hearing, the hearing panel decides which REALTOR® is entitled to the award (typically a disputed commission in a transaction), proven by a preponderance of the evidence.

F. Payment of the Award - Generally, the award of the panel in an arbitration case can be judicially enforced if not paid by the non-prevailing party. The non-prevailing party must, within 10 days of transmittal of the award, either pay the award or deposit a like amount with the association.

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Part 4: Concepts of Procuring Cause in Arbitration

- I. NAR's Arbitration Guidelines
 - A. Found in the Code of *Ethics and Arbitration Manual*.
 - B. Guidance to hearing panels as to how to determine procuring cause in arbitration hearings.
 - C. Also referred to as "Suggested Factors for Consideration by a Hearing Panel in Arbitration."
 - D. Guidelines focus on "procuring cause" as the basis for resolving most commission disputes between brokers.

- II. Key Factors in a Procuring Cause Dispute
 - A. No predetermined rule of entitlement may be established by an association.
 - B. Hearing panels should consider the entire course of events.
 - C. Matters such as the first showing of the property, the writing of the successful offer or the existence of an agency relationship with the buyer are not, in themselves, exclusive determiners of procuring cause/entitlement.
 - D. The key concepts of procuring cause are referenced in this definition from Black's Law Dictionary, Fifth Edition:

The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object.
 - E. Or, as the Arkansas Supreme Court put it:

It's not the squirrel that gathers the nuts, but the one who shakes the tree.
(who is entitled to be paid)

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Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

- I. Article 1
 - A. Protect and promote the interests of the client;
 - B. This obligation to the client is primary;
 - C. But must treat all parties honestly, regardless of agency or non-agency relationship.
 - E. Standard of Practice 1-2 defines terms such as “client,” “customer,” “agent,” and “broker.”

Case Study

Your community has been hit hard by a downturn in the economy. There have been many layoffs at the local factory and property values have decreased. You've been talking with George and Melanie K. about listing their house. George is stuck on the figure of \$150,000. You've explained that nothing in their area has ever sold for more than \$130,000 -- and that was more than a year ago. But he doesn't want to hear that. It's a good home. You know if it was priced right -- at fair market value -- you could sell it. In the meantime, George has talked to other firms. In fact, licensee Denny H. at XYZ Realty (a different company than yours) offered to list it at \$150,000. But George came back to you because you were referred by his golf partner. You decide to list it. Yesterday, you got a call from REALTOR® Tanya P. She asks, "What's it got? -- a tennis court? -- a swimming pool? I mean, nothing's ever sold in that area for more than \$125,000 -- maybe \$130,000 ... "You're not sure what to say.

What should you say to Tanya?

When you listed the K's home at \$150,000, were you in violation of the Code?

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Suppose the home is sold for \$150,000 to someone who is working with another company's licensee and that buyer is just transferring into town. Later, that buyer realizes that the price she paid was \$20,000 more than what any other property in the area had sold for. Would your failure to disclose to the buyer or her licensee the fact that no other property had sold for more than \$130,000 be a violation of the Code?

NOTES

II. Article 2

- A. Avoid exaggeration, misrepresentation and concealment of pertinent facts about the property or the transaction;
- B. But there is no obligation to discover latent defects, matters outside scope of license, or matters confidential under agency or non-agency relationships.

Case Study

REALTOR® Bob, a home builder, showed one of his newly constructed homes to Sheila and Tom J. In discussions about the home and the area, Sheila observed that some kind of construction was beginning nearby. She asked Bob what it was. Bob said, "I really don't know, but I believe it's a new shopping center that has been planned for the area." Sheila and Tom proceeded to purchase the home. Sometime after the closing, Sheila and Tom learned that the new construction was to be a bottling plant and that the adjacent area was zoned industrial.

Sheila and Tom were very upset and contacted Bob about their dissatisfaction. Bob's response was that he had given them an honest answer at the time and that he has no positive knowledge about the new construction. He told them that he knew that the shopping center was going up in the area and had simply ventured a guess that the construction they had observed was the shopping center. Bob further explained that he told them up front that he "didn't know."

Sheila and Tom were not satisfied with this explanation and have filed an ethics complaint against Bob with the local association of REALTORS®.

How does Article 2 apply to this case?

Is Bob in violation of the Code?

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What was Bob's obligation to Sheila and Tom?

Were there better ways for Bob to have responded to Sheila's question? If so, how should Bob have responded?

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III. Article 9

- A. Agreements shall be in writing whenever possible;
- B. In clear and understandable language;
- C. Expressing the specific terms, conditions, obligations and commitments of the parties.
- D. A copy of each agreement shall be furnished to each party upon their signing or initialing.
- E. Standard of Practice 9-1 requires that reasonable care be used to keep documents current by use of written extensions and amendments.

Case Study

Jake, a licensee with Smith Realty, entered into a listing agreement with June to sell her property at 5678 Sunset Lane. At the house, he gave June a copy of the completed listing agreement. After he got back to the office, he noticed that the street address was listed on the agreement as 5778 Sunset Lane. He corrected the error before turning the listing agreement over to his broker.

Is Jake in violation of the Code?

What was Jake's obligation to June?

What should Jake have done when he noticed the incorrect information?

NOTES

IV. Article 12

- A. Be honest and truthful in real estate communications.
- B. Present a “true picture” in your advertising, marketing, and other representations.
- C. Ensure that status as real estate professionals is readily apparent in advertising, marketing, and other representations.
- D. Recipients of all real estate communications must be notified that those communications are from a real estate professional.

Case Study

Everyday REALTOR® Jack R. passed the vacant lot and often wondered why no one was developing anything there. It was an excellent location. He had always meant to follow up -- but forgot about it as soon as the lot was out of sight. But here was his chance. A “for sale” sign had appeared. It showed what appeared to be a residential phone number -- and nothing else. What an opportunity! He jotted down the number and hurried to his office.

As soon as he sat down, he called the number. To his surprise, a familiar voice answered. It was Jill A., a REALTOR® he knew. She told him that her broker, Sandy G., had an exclusive on the property and had asked Jill to use her personal telephone number on the sign.

Jack thanked her for the information and hung up. He wondered what to do now ...

How does Article 12 apply to this case?

Is Jill and/or Sandy in violation of the Code?

NOTES

V. Article 16

- A. Do not engage in any practice or take any action inconsistent with the agency or other exclusive relationship that other REALTORS® have with clients.

- B. Examples of issues covered by Article 16 and its Standards of Practice
 - 1. Innovative or aggressive business practices
 - 2. Advertising/solicitations which may be received by other REALTORS® clients
 - 3. Solicitation of listings and agency relationships of clients of other brokers
 - 4. Dealing with other brokers' clients
 - 5. Obligations when entering into exclusive relationships
 - 6. Agency and/or brokerage relationship disclosure
 - 7. Compensation

Case Study

It was a slow summer, so Don decided to initiate an aggressive marketing campaign to build sales. A key part of his new campaign was direct mail advertising. Don obtained a mailing list that included every home in the Cedar Creek (a large subdivision).

Within Cedar Creek were a number of homes for sale that were listed with other brokers. After Don's mailing goes out, several of those brokers filed an ethics complaint against him.

What Standard of Practice under Article 16 applies to this case?

Is Don in violation of the Code? Why or why not?

NOTES

Part 6: Wrap-up and Conclusion

The REALTORS® 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.

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