

NAR Code of Ethics:

Crack The Code



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Objectives:

- Increase understanding of the history and purpose of the Code of Ethics and its effect on today's real estate markets.
- Apply the Articles of the Code of Ethics to current business practices in every market.
- Master a basic understanding of the enforcement process related to the Code of Ethics.

Why do we call them "Listings"?



History of the Code

- 1908 - The National Association of Real Estate Exchanges (now the National Association of REALTORS®) was founded with the goal of establishing high ethical standards to protect buyers and sellers.
- 1911 - The Code of Ethics was written by a dentist friend of one of our members.
- 1913 - The Code of Ethics was adopted for voluntary use by all members.

History Continued:

- 1916 - The term "REALTOR" was purchased from Charles Chadbourn for \$1.
- 1924 - The Preamble, written by Arthur H. Barnisel, a REALTOR® and Presbyterian minister from Tacoma, WA, was added to the Code of Ethics.
- As of 2013, the Code of Ethics has been amended approximately 40 times.

How Are Changes Made?

- Suggestions Are Submitted to the NAR Professional Standards Committee
- They are reviewed by the Interpretations Sub-committee
- If the sub-committee believes a change should be made, it is presented to the full committee for consideration.
- If the full committee agrees, it goes to the BOD.
- If the BOD agrees, it goes to the Delegates.
- If the Delegates agree, it is adopted for use at the beginning of the following year.

Preamble to the NAR Code of Ethics and Standards of Practice (COE)

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

The COE is not aspirational. It is a minimum standard.

Preamble

Paragraphs 1&2 - Establishes our duty to protect private property rights

Paragraph 3 - Establishes the duty to police one another

Paragraph 4 - Promotes exclusive representation and cooperation among REALTORS

Paragraph 5 - Money does not rule a REALTOR's behavior

Preamble (cont.)

Paragraph 6 – Golden Rule

Paragraph 7 – COE is not just for business but for everything we do

Sections of the COE

- Duties to Clients and Customers, Articles 1-9
- Duties to the Public, Articles 10-14
- Duties to REALTORS®, Articles 15-17

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 clients.** 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.

Article 1 - Questions

- The owner wants about \$20,000 more than the property will sell for. I'm going to take the listing at his price and I'll just try to get him to reduce it until we sell it. After all, he's not going to list with me if I tell him now and it's a great place to have a sign.
- Am I violating the code?

Answer: SOP 1-3

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

Note: SOP 1-3

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.

Question?

- I received three offers on my listing today. One of them is for less than the sellers owe on the property. The second one is from another company and for \$1500 less than the third, which I wrote. Mine is full price. I'll tell the seller that there are two other offers but since mine nets the most, it's the only one I have to discuss. As long as I tell them about the other two I'm not violating the code. True or False?

Answer: SoP 1-6

False

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

What factors other than net are often important to the seller?

ARTICLE 2

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

Article 2 simply...

- Guarantees faithful service to both clients and customers as consumers of real estate services.
- Protects the consumer by ensuring that the REALTOR®:
 - provides accurate, factual information without exaggeration
 - communicates truthfully and does not misrepresent the facts
 - does not remain silent concerning pertinent facts including adverse factors affecting the property.

Question?

- There is a hole in the wall behind the door. If I (REALTOR®) see it, do I have to point it out?

Answer:

- Yes
- Article 2 states: REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction.

Question?

- The floor is slightly unlevel. The buyers nor I noticed when previewing the property. Am I obligated to know it's unlevel and address it with the buyer?

Answer: SoP 2-1

- No
- SoP 2-1 states: REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines.

ARTICLE 3

REALTORS® shall cooperate with other brokers except when cooperation is not in their clients best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker.

Article 3 simply...

- Obligates REALTORS® to cooperate with their competitors on mutually agreed upon terms when it is in the best interest of their client.

Question? TRUE or FALSE

- I am a REALTOR® looking for investment properties for myself. When I call the listing agents, I just let them think I am working with a buyer. Nothing says I have to tell them it's for me.

Answer: SoP 3-7

- When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client, and if on behalf of a client, their relationship with the client.

Question? YES or NO?

- I list a lot of foreclosures. They are vacant so I just publish the combo in the remarks on MLS. That way no one bothers me until they have an offer. Another REALTOR® chewed me out. She said that if it doesn't specifically say that I can do that in my listing agreement, I'm in violation of the code. Is she right?

Answer: SoP 3-9

- Yes
- REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker.

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. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Article 4 simply...

- Requires a REALTOR to give full disclosure of their ownership or interest to the buyer or seller or their agent or representative.

Question

- I am a REALTOR®. I see a sign for an unrepresented seller in the front yard of a home where I own other rental property. I make contact with the owner and negotiate to purchase the property. At what point do I disclose, in writing, that I am a licensee?

Answer: SoP 4-1

- For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® **prior to the signing of any contract.**
- *Before I write the offer. Not only in the 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 it is specifically disclosed to all affected parties.

ARTICLE 6

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

When recommending real estate products or services (e.g., 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

*Texas Real Estate License Act requires that referral fees be disclosed to the parties.

Question

- When is the appropriate time to disclose if you have a relationship with a residential service provider?

SoP 6-1

- REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without **disclosing such interest at the time of the recommendation or suggestion.**

Disclosure of Relationship with Residential Service Contract Provider

- TREC Form, Mandatory if Either Broker has relationship

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.

Questions?

- Are we doing this?
- How do you handle bonus' to selling agent when you represent the buyer?
- What are some other situations where this comes up?

ARTICLE 8

REALTORS® shall keep in a special account 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 8 simply...

- REALTORS® must not commingle their firm's monies or their personal monies with money accepted in trust of others. Such money must be placed in a separate account to safeguard against its unauthorized use.

Questions?

- Do you think we are good about doing this? i.e., earnest money, option money?
- What about in property management?
- Applications fees, etc?

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 and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.

Question?

- I've been working with these buyers for a couple of months. They want to sign an offer but they had to leave town. Can I just send it via DocuSign and get it signed so that I can present it as soon as possible? We can go over all the details face to face when they get back to town.

Exercise
Articles 1-9
Duties to Clients and
Customers

Group Assignments:

Share a 'real life'
scenario and how it
should be handled
based on the
assigned Article.



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 or gender identity.

REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex handicap, familial status, national origin, sexual orientation or gender identity.

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

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Question?

What does this ad say to the reader? Is it possibly a violation of Article 10?

**Fabulous 5 bedroom, 4 bath home, walking distance to the park,
Mosque and Temple. Great condition. Won't last long!**

Question?

My clients have a child who is handicapped and uses a wheelchair. They say they want to see everything that is available in their price range. However, I've decided not to show them two story homes for obvious reasons. If there isn't a one story that they like, we can go back and look at multi-story properties. I know they will appreciate that I'm thinking of them and their child.

Is this agent violating Article 10? Should the agent discuss it with the clients?

Question?

We are in a small community that is primarily retirees and second homes. All of my agents promote their family values and commitment to the community.

I've been interviewing candidates for an administrative position in my brokerage. By far, the most qualified candidate is a very professional young man named Paul. We didn't discuss his sexual preferences but it is obvious that he is very in touch with his feminine side. I'm afraid my staff and my clients will not be as tolerant of him as I would prefer. I'm going to hire someone who is less qualified but more 'mainstream'.

Is it possible there is a violation of Article 10 here? What about Federal Fair Housing rules?

Question?

Prospect: "I do not want to be in a neighborhood with a lot of minorities. Do not show me any properties in those lesser neighborhoods."

REALTOR: "I can't make decisions for you based on that criteria. Why don't you tell me which neighborhoods you would like to see and we'll go from there."

Is this a good answer? Has the REALTOR violated Article 10?

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, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

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

Question?

I am a brand new agent. I've never sold anything. How do I get started without violating Article 11?

What would you tell this agent?

Question?

I've been selling Farm and Ranch for almost 20 years. One of my sellers is downsizing. He wants to buy a small house in town. Everyone knows residential sales is the easiest. This is no big deal. If I have a question, I'll just ask another REALTOR.

Is there a possible violation of Article 11?
What is this agent's best course of action?

Question?

A past client calls you and asks you to come out and give them an appraisal. They are thinking about selling their home.

What do you say?

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.

Question?

5/3/3, brick on 1 acre, Lazy Day Elementary district. Only \$119,000 Call Leigh at 817-613-6420!

What's missing that is required by Article 12?
(Note*Many state rules require more than our COE)

Questions?

What's missing from this sign?



Question?

What are the advertising rules specific to your state's real estate license act?

Question?

If I'm posting to Facebook on my personal page, do I have to follow the advertising rules?

What is an advertisement?

Question?

The Seller really needs to sell the house and a Buyer's agent is asking what the chances are that the Seller will take \$190,000 on my \$200,000 listing and I know the Seller will come down as we had a previous contract at that price but it fell apart. Is it OK to tell the Buyer's agent that the Seller will take \$190,000?

Question?

I represent the Buyer and we have closed and I want to put my Sold sign on the property and my Buyer thinks that is a good idea but the listing agent says she has to agree to that according to SoP12-7 and she won't agree to let me put up my sign. Is that right?

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.

Question?

The title company gave me a power of attorney form that my husband and I use when he's going to be out of town. One of my clients needs a power of attorney for an upcoming sale. Can I just put their names in and give it to her?

Question?

My client is selling his home and wants to make the sale contingent on his qualifying for a loan to purchase another home. The state form does not include language for that. However, there is a spot for extra details so I just wrote it in there. The other agent is advising her client to have an attorney review that paragraph before agreeing. What's the big deal? She acts like I'm doing something wrong.

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.

Question?

I received notice that a complaint was filed against me alleging that I violated Article 1. I'm a busy REALTOR and don't have time to deal with this. I'll deal with it when I get to it, if I get to it.

Three months later: What? I received notice that there was a hearing and I was found in violation of Articles 1 and 14. Can they do that?

Question?

The MLS Committee Chair sent a notice to one of the members that a hearing had been scheduled to discuss the members' possible violation of MLS rules. The member did not respond or cooperate.

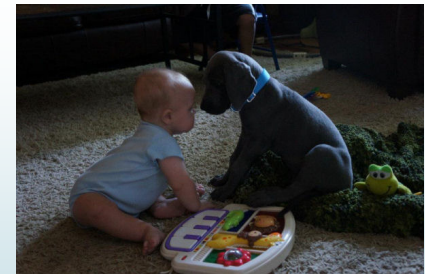
The MLS Committee can file a complaint with the board under Article 14 of the Code of Ethics.

TRUE or FALSE?

Exercise Articles 10-14 Duties to the Public

Group Assignments:

Share a 'real life' scenario and how it should be handled based on the assigned Article.



Article 15

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

Question?

I really want this listing, can I warn the prospect about the other agent with whom they are thinking about doing business?

Question?

On my website I've posted testimonials from friends in the community saying negative things about my competitors. It's not me saying it so No Harm, No Foul.

Right?

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.

Question?

Can I do a general mail out to a subdivision soliciting for sellers or buyers even if there are active listings in the area?

Question?

What if a listing broker, when asked by another REALTOR® refuses to disclose the expiration date and nature of the listing, can I call the seller?

(16-4)

Question?

When someone calls on my listing, am I required to always ask if they are working with a REALTOR?

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 mediate the dispute if the board requires its members to mediate. If the dispute is not resolved through mediation or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

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

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

Question?

We've closed and an outside brokerage is requesting arbitration for a commission that we've collected. The agent has been paid and the file is finished. Are we obligated to go to Arbitration?

Question?

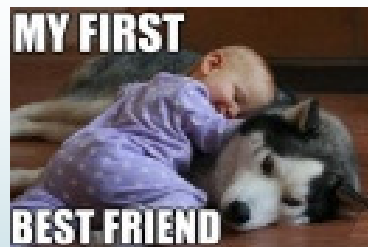
A past tenant has requested Arbitration through the Association of REALTORS. They are asking that we, the property management firm, reimburse them for rents they paid while they lived there. Are we required to Arbitrate with them?

Why or Why not?

Exercise
Articles 15-17
Duties to REALTORS

Group
Assignments:

Share a 'real life'
scenario and how
it should be
handled based on
the assigned
Article.



Procuring Cause

Black's Law Dictionary, Fifth Edition, definition of procuring cause:

■ *The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object.* The inducing cause; the direct or proximate cause. Substantially synonymous with "efficient cause."

Mohamed v. Robbins, 23 Ariz. App. 195, 531 p.2d 928, 930.

■ A broker will be regarded as the "procuring cause" of a sale, so as to be entitled to commission, if his efforts are the foundation on which the negotiations resulting in a sale are begun. A cause originating a series of events which, without break in their continuity, result in accomplishment of prime objective of the employment of the broker who is producing a purchaser ready, willing, and able to buy real estate on the owner's terms.

Enforcement Procedure *Texas Specific*

- Complainant Calls Association
- Ombudsman Service is offered
 - If used and successful, the end.
 - If not used or not successful:

Procedure cont.

- Complaint is filed
- Grievance Tribunal Reviews – If there is POSSIBLY a violation, case is forwarded to hearing or citation. If no possible violation, dismissal.
- Parties are offered Mediation. Ethics is voluntary. Arbitration is mandatory.

Enforcement Cont.

- If Mediation is refused or is not successful, case is forwarded to Hearing.
- Hearing Panel hears from both parties, reviews evidence, drafts 'Findings of Facts' and makes decision. If panel finds that articles were violated, panel will determine sanctions.

Enforcement Cont.

- If respondent has evidence in an ethics hearing that was not available to them at the time of the original hearing, they may appeal. A respondent may only appeal an arbitration decision based on procedural deficiency.
- With no appeal pending, the final decision goes to the respondent's local association Board of Directors for final approval. They can approve as is, ask for further review by the panel or request lesser penalties. Most often, the Board of Directors approves the panels findings and decision.

Questions About Enforcement?

Questions About Anything We Discussed Today?

Questions for Leigh?

Instructor Evaluations

Thank you! Thanks for coming and for staying. I sincerely hope you've enjoyed the class and learned something you can use in your business.



Leigh York

Feel free to call me anytime if I can be of service.

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