

Pursuant to Policy 22 of the *Code of Ethics and Arbitration Manual* of the National Association of REALTORS® the contents of this handout reflect the understanding and opinions of Trista Curzydlo, J.D. and do not represent an official expression of policy by the National Association of REALTORS®

## **National Association of REALTORS® Code of Ethics**

Over 100 years ago, a group of men met in Chicago, Illinois with the intent to revolutionize the real estate industry in the United States. At the time, the industry was most remarkable for a history that included land speculation, exploitation of consumers and a lack of legal regulation. That meeting in Chicago, and the subsequent creation of what is now the National Association of REALTORS®, were the first steps in setting a standard of professionalism for real estate practitioners. In 1913 the first Code of Ethics was adopted by the National Association. The REALTORS® were one of the first trade organizations to adopt a Code of Ethics.

The Code is significant not only for the guidance it provides in the behavior of REALTORS®, but in the role it has played in guiding the Association in becoming a leader in advocating for the protection of private property ownership.

## **Reading the Code**

The Code of Ethics is comprised of a Preamble and 17 Articles. Associated with each article are Standards of Practice that clarify the implementation of the Article. The National Association of REALTORS® Professional Standards Committee also publishes *Interpretations of the Code of Ethics* which is developed to help REALTORS® understand the ethical obligations created by the Code. Pathways to Professionalism are professional courtesies and cannot form the basis for a professional standards complaint.

## **Anatomy of an Ethics Complaint**

An ethics complaint can be filed by anyone; a member of the public, another REALTOR®, a client or customer. Upon filing, the complaint will be presented to the Grievance Committee. The role of the Grievance Committee is similar to that of a grand jury in a criminal complaint. The Grievance Committee does not make a judgment on the complaint they ask the following question “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?” If the Grievance Committee answers in the affirmative, then the complaint is forwarded to a Professional Standards Hearing Panel for a hearing. A Professional Standards Hearing Panel is quasi-judicial. Witnesses are called, evidence is presented and sworn testimony is given. In many cases, a court reporter will record the hearing in its entirety. The Professional Standards Hearing Panel will determine if a violation has occurred only if it is proven by clear, strong and convincing proof. The panel will also determine if discipline is called for and decide what discipline is appropriate. Due process is provided and guaranteed throughout the entire process.

### **Ethics or Arbitration?**

Your REALTOR® association resolves two distinctly different types of cases, ethics cases and arbitration requests. Ethics cases are the “conduct” cases alleging a violation of one of the articles of the Code of Ethics. Arbitration cases are the “money” cases which involve disputed commissions between REALTORS.® The majority of commission disputes between REALTORS® associated with different brokerage firms are required to be arbitrated rather than litigated if either party requests arbitration.

### **Potential Discipline**

Only the state regulatory board has the authority to revoke the real estate license of an agent, however, the potential discipline from the REALTOR® Association can be formidable. The following are potential disciplines:

- 1.) Letter of warning,
- 2.) Letter of reprimand,
- 3.) Require additional educational classes,
- 4.) Fine not to exceed \$15,000,
- 6.) Suspension for not less than 30 days nor more than one year,
- 7.) Expulsion from membership for one to three years,
- 8.) Suspension or termination of MLS privileges.

A probationary period of one year or less is available and is not disciplinary action.

An administrative process fee not to exceed \$500 may be assessed, but this is not a disciplinary action.

## **Pathways to Professionalism**

The Pathways to Professionalism are recommended professional courtesies for REALTORS to implement into their practices to increase the professionalism of the industry. They are not mandatory and can't serve as the basis for an ethics complaint. They are divided into the following sections: Respect for the public, Respect for property, Respect for Peers.

### **Respect For The Public**

1. Follow the "Golden Rule"—Do unto others as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Call if you are delayed or must cancel an appointment or showing.
5. If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
6. Communicate with all parties in a timely fashion.
7. When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.
8. Leave your business card if not prohibited by local rules.
9. Never criticize property in the presence of the occupant.
10. Inform occupants that you are leaving after showings.
11. When showing an occupied home, always ring the doorbell or knock—and announce yourself loudly—before entering. Knock and announce yourself loudly before entering any closed room.
12. Present a professional appearance at all times; dress appropriately and drive a clean car.
13. If occupants are home during showings, ask their permission before using the telephone or bathroom.
14. Encourage the clients of other brokers to direct questions to their agent or representative.
15. Communicate clearly; don't use jargon or slang that may not be readily understood.
16. Be aware of and respect cultural differences.
17. Show courtesy and respect to everyone.
18. Be aware of—and meet—all deadlines.
19. Promise only what you can deliver—and keep your promises.
20. Identify your REALTOR® and your professional status in contacts with the public.
21. Do not tell people what you think—tell them what you know.

## **Respect for Property**

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.
5. Enter property only with permission even if you have a lockbox key or combination.
6. When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc). If you think something is amiss (e.g. vandalism) contact the listing broker immediately.
7. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if weather is bad, take off shoes and boots inside property.
9. Respect sellers' instructions about photographing or videographing their properties' interiors or exteriors.

## **Respect for Peers**

1. Identify your REALTOR® and professional status in all contacts with other REALTORS®.
2. Respond to other agents' calls, faxes, and e-mails promptly and courteously.
3. Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
4. Notify the listing broker if there appears to be inaccurate information on the listing.
5. Share important information about a property, including the presence of pets, security systems, and whether sellers will be present during the showing.
6. Show courtesy, trust, and respect to other real estate professionals.
7. Avoid the inappropriate use of endearments or other denigrating language.
8. Do not prospect at other REALTORS®' open houses or similar events.
9. Return keys promptly.
10. Carefully replace keys in the lockbox after showings.
11. To be successful in the business, mutual respect is essential.
12. Real estate is a reputation business. What you do today may effect your reputation—and business—for years to come.

The Pathways to Professionalism can be “localized” that is, local associations can add to or remove sections to incorporate local practices. What would you add to the Pathways to Professionalism to serve as a tool to increase the professionalism of your peers?

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**“Under All Is The Land”**

The Preamble to the Code of Ethics is the aspirational foundation of the Code. Voicing the principles upon which the National Association of REALTORS® was founded, the concepts included within the Preamble may not serve as the basis for disciplinary action against a REALTOR®. The code embodies professionalism in the industry and the overall concept of service to the public.

**Article 1**

**Case Study**

Ned was contacted by Alice, the Director of Alumni Relations for his alma mater, Gnomaventure University. Alice explained to Ned that the University had been bequeathed a large property by an alumni and that the University wished to sell the property and use the proceeds to fund scholarships to the University. Ned conducted a market analysis, suggested a price for the property and the parties agreed to an exclusive listing contract. A full price offer was received within a matter of weeks and closed shortly thereafter. Two weeks after closing, a trustee of the university, who handled all investments and bequeaths, filed a complaint against Ned alleging a violation of Article 1 of the Code of Ethics. In the complaint, the Trustee explained that recent zoning changes had impacted the value of the property and resulted in the sale of the property at less than one-eighth of its fair market value.

If you were a member of the Grievance Committee and had only the information above, would you recommend the complaint be heard by a panel of the Professional Standards Committee? \_\_\_\_\_

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The Grievance Committee referred it for hearing before a panel of the Professional Standards Committee. At the hearing the following facts were discovered.

1. The property was in an area which had been approved for rezoning from residential to commercial use in a general revision of the local zoning map and ordinance that was in preparation.
2. Although specific sections of the revisions, including the section involving the lot in question, had been tentatively approved, final approval had not been given to the complete revision at the time of the sale, but this action had been taken a few days following the sale.
3. For several months prior to the sale there had been a public notice of the proposal to rezone affixed to a sign near one corner of the property.
4. In his one inspection of the property, Ned had not noticed the sign.

5. Other sales in the rezoned area substantiated the client’s belief that the shift to commercial zoning supported a value at approximately eight times the price received for the lot.

Ned defended himself in the hearing explaining the ordinance putting the rezoning into effect had not been enacted at the date of his sale of the client’s property, and that he had no knowledge at the time of the rezoning proposal.

If you were a member of the hearing panel, what additional questions would you want addressed? \_\_\_\_\_

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Findings and recommendations: \_\_\_\_\_

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## **Article 2**

### **Case Study**

Based on Case #2-7 Obligation to Determine Pertinent Facts from the *Interpretations of the Code of Ethics*

Nelly, an agent with Better Gnomes and Gardens showed a newly constructed home to Bert and Bea Buyer. The home was the final home constructed in Phase 2 of a subdivision with 4 planned phases. The lot backed to a large empty space that had some earth moving equipment parked on it during the showing. While standing on the deck discussing the property and the development, Bea inquired as to what type of construction was beginning on the lot. Nelly responded by saying “I really don’t know, but I heard from a reliable source that the farmer who owns that lot is anti-growth and is going to keep that as a green space.” 60 days following the closing on the property, Bert and Bea are shocked when the earth moving equipment starts digging a large man-made lake and infrastructure for Phase 3 of their development.

Bert and Bea contend that had they known that the property would back to a large man made lake they would have not purchased the home. Bert and Bea file a complaint with the local Board of REALTORS® charging Nelly with a violation of Article 2.

If you were a member of the Grievance Committee and had only the information above, would you recommend the complaint be heard by a panel of the Professional Standards Committee? \_\_\_\_\_

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Nelly defends herself by saying that she gave an honest answer to the questions. She didn’t really know what would happen to that lot.

If you were a member of the hearing panel, what additional questions would you want addressed? \_\_\_\_\_  
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Findings and recommendations: \_\_\_\_\_  
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**Article 3**

**Case Study**

Ned, a REALTOR®, is approached by Victor who wishes to sell a commercial property. Victor explains to Ned that he has developed personal relationships with 5 of his long term clients who have all expressed an interest in buying the property. Victor provides Ned with a list of the clients and asks him to contact them first before actively pursuing other potential buyers. Ned is contacted by Jeremy, a REALTOR® who explains that he has a client who is interested in the property and would like to conduct an inspection of the property. Ned explains that he is not currently showing the property but he will contact Jeremy if the situation changes. Jeremy files a complaint with the Board of REALTORS® alleging a violation of Article 3.

If you were a member of the Grievance Committee and had only the information above, would you recommend the complaint be heard by a panel of the Professional Standards Committee? Why? Or Why not? \_\_\_\_\_  
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**Article 16**

**Case Study**

Sally is a successful actress who needs to sell her home for various personal reasons. She meets with Neville, a REALTOR®, and explains that she would like the sale handled without advertising, and without drawing any unnecessary attention to the sale. Neville and Sally discuss that he will need to contact prospective buyers and potentially other REALTORS® who are representing prospective buyers but he will not list the property in the MLS and will not make any public announcement or advertising. Sally states she understands Neville will need to make a limited number of contacts with other REALTORS® but asks that he explain to them the need for privacy. Neville contacts Nelly, a REALTOR® whom he has worked with in the past and knows has an extensive client base who might be interested in the property. Neville explains to Nelly the need for privacy in the transaction and asks that she respect Sally’s wishes. Neville doesn’t discuss the property with anyone other than Nelly.

Neville becomes aware through a social media post that Norbert, a REALTOR®, is aware of the listing and knows details of the property that would have only been available from Neville or Nelly. When Neville contacted Norbert, he explained that his information had come from Nelly. Neville filed a complaint alleging that Nelly had violated the Code of Ethics, specifically, Article 16 and that Nelly's breach of confidence under the circumstances was a failure to respect his exclusive agency relationship with Sally.

If you were a member of the Grievance Committee and had only the information above, would you recommend the complaint be heard by a panel of the Professional Standards Committee? Why? Or Why not?

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If you were a member of the hearing panel, what additional questions would you want addressed? \_\_\_\_\_

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Findings and recommendations: \_\_\_\_\_

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## **Article 12**

### **Case Study**

Charles is the current broker owner of Charming Realty. Charles prides himself on his ability to recruit agents by offering comprehensive training and emphasizes the incorporation of technology and new media in the operation of the brokerage. Every new agent who joins Charming receives a course on website design and maintenance and Charming pays for all the costs associated with procuring and maintaining personalized domain names for each sales associate.

Julie had been an agent with Charming Realty for nearly seven years and had an excellent working relationship with Charles when she decided that she wanted to become a business owner and create her own brokerage. The day after her last day with Charming Realty, Julie realizes she can no longer log into her website. Julie contacts Charlie who informs her that pursuant to the independent contractor agreement she signed when joining the brokerage, the domain name is the property of Charming Realty. Julie attempts to negotiate for a release or even sale of the domain name but is unsuccessful. Julie files an ethics complaint against Charles alleging a violation of Article 12. Julie points to Standard of Practice 12-12 as supporting her position, if Charles were to continue use of the domain name which includes her first and last names, it would not be a true picture as she is not an agent with Charming Realty.

At the hearing, Charles defended his refusal to release the domain name stating that at the time he registered it, Julie was a member of the Brokerage, and that use of the domain name by a member of his firm had presented a true picture. Circumstances change, he noted, adding that when the domain name was registered on behalf of the firm and Julie, his actions were consistent with Article 12. “The fact that Julie started her own firm shouldn’t result in me being found in violation of the Code of Ethics.”

If you were a member of the Grievance Committee and had only the information above, would you recommend the complaint be heard by a panel of the Professional Standards Committee? Why? Or Why not?

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If you were a member of the hearing panel, what additional questions would you want addressed?

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Findings and recommendations:

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### **Anatomy of an Arbitration Request**

An arbitration case begins with a request being filed by a REALTOR® pursuant to Article 17 of the Code of Ethics. The request is forwarded to the Grievance Committee who reviews the request and determines arbitrability.

The Grievance Committee will determine if the request is between REALTORS® involving a matter arising out of their relationship as REALTORS® and if that dispute is contractual or one of the non-contractual disputes set forth in Standard of Practice 17-4 and ask “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 properly arbitrable, i.e. is there some basis on which an award could be based?” If the answer is yes, the matter is sent to the Professional Standards Hearing Panel.

The Professional Standards Hearing Panel then conducts a hearing using the following standard: preponderance of the evidence to determine which REALTOR® is entitled to an award. The arbitration hearing allows each party to present evidence and witnesses and question the witnesses of the other party.

### **Which Squirrel are You?**

“Procuring cause” is the determiner of entitlement in cooperative transactions. The following are guidelines set forth to assist the Professional Standards Hearing Panel in determining which REALTOR® was the procuring cause in the transaction: 1.) There is no predetermined rule of

entitlement, 2.) The entire course of events will be examined, 3.) There is not one action that is the ultimate determiner, 4.) The cause originating a series of events which, without a break in their continuity, result in the prime objective. As the Arkansas Supreme Court so eloquently stated in determining who is entitled to compensation “It’s not the squirrel that gathers the nuts but the one who shakes the tree”. The parties are bound by the decision of the panel.

### **Mediation**

The preferred dispute resolution system of the National Association of REALTORS® is mediation. All REALTOR® Associations have been required to provide mediation services to their members since January 1, 2002.

Unlike an arbitration where a Professional Standards Hearing Panel makes a determination on entitlement to compensation, mediation facilitates an agreement between REALTORS® to end a dispute. A mediation officer clarifies issues in the dispute and guides discussions between the parties. Mediation is a less adversarial approach.