

The Three C's
Cooperation,
Compensation and the
Code of Ethics



This program also satisfies

The REALTOR® Code of Ethics

Biennial Member Education Program

Developed by:

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History and Background of the NATIONAL ASSOCIATION OF REALTORS® and the Code of Ethics

- The NATIONAL ASSOCIATION OF REALTORS® was formed in 1908.
- There were no license laws at the time.
- At that time, the real estate industry had a history of speculation, exploitation, and disorder.
- The Code of Ethics was adopted in 1913 to establish a professional standard of conduct.
- Two concepts that remain in the Code of Ethics today that were part of the Code in 1913 are

1. Cooperation with other REALTORS®

“An agent should respect the listings of his brother agent, and co-operate with him to sell – provided the other agent has the most suitable place”

2. The duty to Arbitrate

“Invoke friendly arbitrations by the Real Estate Association rather than through the courts of law, in settling difference with other agent”

"Business ethics"

- What are "business ethics?"
 1. Industry codes
 2. Company policies
 3. Individual moral values
- Business ethics and legal standards
- Business ethics and the REALTOR® Code of Ethics

Pathways to Professionalism

- Professional courtesies for use by REALTORS® on a voluntary basis
 1. Respect for the Public
 2. Respect for Property
 3. Respect for Peers

The Structure of the Code of Ethics

- The three major sections establish objective, enforceable, ethical standards governing the professional conduct of REALTORS®
 1. Duties to Clients and Customers
 2. Duties to the Public
 3. Duties to REALTORS®
- Articles – broad statements of ethical principles.
- Standards of Practice – support, interpret, and amplify the Articles under which they are stated.

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

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

Preamble to the Code of Ethics

- Initially adopted in 1924
- Written by the committee’s chairman, a prominent REALTOR® and Presbyterian minister from Tacoma, WA, named Arthur H. Barnhisel,
- Aspirational for REALTORS®
- Basic premise set forth the social responsibility of the association and of the local boards.
- Begins with “Under All is the Land”

Code, Courtesy or Preamble?



Code of Ethics



NATIONAL ASSOCIATION OF REALTORS®

REALTORS'® Pledge of Performance and Service

The NATIONAL ASSOCIATION OF REALTORS® adopted the Code of Ethics in 1913, following the professions of medicine, law, and engineering.

REALTORS® are real estate professionals who have chosen to join the National Association and abide by its strict Code of Ethics.

What does this mean to you? It means that any REALTOR® with whom you work has voluntarily agreed to abide by a Code of Ethics, based on professionalism and protection of the public.

REALTORS® are subject to disciplinary action and sanctions if they violate the duties imposed by the Code of Ethics.

The Code of Ethics is a detailed document that spells out the professional responsibilities of every REALTOR®.

Do not hesitate to ask a REALTOR® for a copy of the Code, including the Standards of Practice. The Code is your assurance of dealing with a professional who has your best interests in mind.

The Code of Ethics consists of seventeen Articles and related Standards of Practice. The basic principles of the Code are summarized below.

Please note that the following is not a substitute for the Code, but simply a general overview of the Code's key principles. For additional information about the Code of Ethics and its enforcement, speak with a REALTOR® or contact the local association of REALTORS® nearest you.

Duties to Clients and Customers

Article 1

REALTORS® protect and promote their clients' interests while treating all parties honestly.

Article 2

REALTORS® refrain from exaggeration, misrepresentation, or concealment of pertinent facts related to property or transactions.

Article 3

REALTORS® cooperate with other real estate professionals to advance their clients' best interests.

Article 4

When buying or selling on their own account or for their families or firms, REALTORS® make their true position or interest known.

Article 5

REALTORS® do not provide professional services where they have any present or contemplated interest in property without disclosing that interest to all affected parties.

Article 6

REALTORS® disclose any fee or financial benefit they may receive from recommending related real estate products or services.

Article 7

REALTORS® receive compensation from only one party, except where they make full disclosure and receive informed consent from their client.

Article 8

REALTORS® keep entrusted funds of clients and customers in a separate escrow account.

Article 9

REALTORS® make sure that contract details are spelled out in writing and that parties receive copies.

Duties to the Public

Article 10

REALTORS® give equal professional service to all clients and customers irrespective of race, color, religion, sex, handicap, familial status, or national origin.

Article 11

REALTORS® are knowledgeable and competent in the fields of practice in which they engage or they get assistance from a knowledgeable professional, or disclose any lack of expertise to their client.

Article 12

REALTORS® paint a true picture in their advertising and in other public representations.

Article 13

REALTORS® do not engage in the unauthorized practice of law.

Article 14

REALTORS® willingly participate in ethics investigations and enforcement actions.

Duties to REALTORS®

Article 15

REALTORS® make only truthful, objective comments about other real estate professionals.

Article 16

Respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients.

Article 17

REALTORS® arbitrate financial disagreements with other REALTORS® and with their clients.

Prepared by the NATIONAL ASSOCIATION OF REALTORS®

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Work on the scenario that is assigned to your group. Try to find which Article and if possible, which standard of practice applies to the situation. Keep in mind, the actual Article itself may answer the dilemma posed.

ETHICALLY SPEAKING: What would you do if...

1. Listing broker REALTOR® Sue has a contract on her listing contingent upon a home inspection. The contract falls through because the home inspection revealed that the furnace has a cracked heat exchanger and the seller refuses to fix it. The seller tells Sue to keep the inspection and the defect confidential and not to disclose the defect to any buyers or cooperating brokers. Listing Broker Sue tells the seller “no way” will she do that and cancels the listing. Six months later, listing broker Sue sees the property relisted with broker Sarah and wonders if the owner has replaced the furnace or fixed it. She sees nothing about it in the listing. Can Sue tell current listing broker Sarah about the latent material defect? What Article and Standard of Practice applies to this situation?

Article(s) _____ Standard(s) of Practice: _____

2. REALTOR® Howard has been licensed for almost 50 years. His daughter now works for the company and was trying to convince him to start advertising on the internet and develop a website for their company. She was showing him how when she searched for their company, she ended up on competitor REALTOR® Danny’s website and was not happy to be losing this business. Upon further research she learned that REALTOR® Danny had registered Howard’s company name as a domain name and was using it to drive traffic to his own website. Howard had never registered his company name as a domain name. Can REALTOR® Danny use another company’s name as a domain name? Can REALTOR® Danny register another companies name as a domain name? What Article and Standard of Practice applies to this situation?

Article(s) _____ Standard(s) of Practice: _____

3. REALTOR® Elaine filed an ethics complaint against REALTOR® Thomas for posting an article she wrote without attribution or permission. Soon after filing the complaint, REALTOR® Elaine received a Google Alert that REALTOR® Thomas had posted a comment on Social Media that “REALTOR® Elaine must have nothing better to do than police other REALTORS® Ethics since she filed a ridiculous complaint against me. Maybe Elaine would be successful in real estate if she concentrated on her own business practices instead of worrying about what other REALTORS® are posting”.

Article(s) _____ Standard(s) of Practice: _____

4. REALTOR® Claudia felt confident she would get the listing of Seller Ronald’s home. She was a friend of the family and had gone to school with his children. Several days after the listing appointment, Seller Ronald’s home came on the market with REALTOR® Paul of XYZ Realty in the MLS. Claudia wanted to contact Seller Ronald to find out what she had done wrong or find out why he chose REALTOR® Paul over her. Can REALTOR® Claudia call Seller Ronald and ask this question? What Article and Standard of Practice applies to this situation?

Article(s) _____ Standard(s) of Practice: _____

5. Tony is showing former seller Client Sally's home to his current buyer client Larry. Larry asks Tony if he knows anything about the seller's motivation. Tony knows that Sally is having difficulty and Sally even confided her bottom line to Tony during their listing. Should Tony tell Larry what he knows about Sally?

Article(s) _____ Standard(s) of Practice: _____

6. You are assisting Seller Client Frank with negotiating a contract with an in-house buyer client. Frank has accepted the offer and you are on your way to his house to sign the contracts. You receive a call from cooperating broker Sue who says she has a cash buyer for Frank's property and she wants to know if there are any other offers on the table. Who should make the decision about disclosing the existence of the other offer?

Article(s) _____ Standard(s) of Practice: _____

7. Listing broker REALTOR® Joan takes a listing on seller client Mark's house and agrees to X% commission if her firm is successful in selling Mark's house or XX% commission if a sale results through the efforts of a cooperating broker. Noting this in the MLS, cooperating broker REALTOR® Jim contacts Joan to find out what the differential is before writing up an offer for his buyer client. Does Joan have to disclose the difference in commission if sold in-house vs. thru a cooperating broker? Does Jim have to disclose this to his buyer client? What Article and Standard of Practice applies to this situation?

Article(s) _____ Standard(s) of Practice: _____

8. Cindy has a listing from Seller Client Mark. She was given permission at the time of listing to place a combination lockbox on the property. Cindy obtained a buyer for the property and it is now under contract and Seller Client Mark has moved all of his personal belongings out of the house. The buyers want to show the property to their parents who are in town for only a few hours on Sunday. The house is supposed to close title in about two weeks. Cindy has a prior commitment to attend her niece's baptism and celebration afterward in a town two hours away and is not available to let the buyers and their parents into the house. Is it ok for Cindy to provide the buyers with the combination to the lockbox since the house is vacant?

9. Brand new agent REALTOR® Louis in your office is so excited that potential Seller & Buyer Charlie called in on his opportunity time and wants to sell his investment property and buy another one. He wants to do a 1031 exchange. Louis doesn't recall learning about 1031 exchanges in pre licensing school. Should Louis disclose his lack of expertise in this area? Could he work with someone else in the office who is experienced in 1031 exchanges? What are his obligations under the Code? What Article applies to this situation?

Article(s) _____ Standard(s) of Practice: _____

10. REALTOR® Peter was sitting in an open house on his listing on Sunday afternoon. Buyers Mary and Paul stopped in to view the home. REALTOR® Peter introduced himself to Mary and Paul and asked if they were working with another broker. Paul responded that they were, in fact, represented by REALTOR® Charlie. They also said they were familiar with the property because they had visited it before as it was previously owned by a close personal friend. REALTOR® Peter offered to show them through the house and Mary and Paul were very interested. Peter knows how anxious his sellers are to sell. Should REALTOR® Peter offer to write an offer for the buyer's? What should he do?

Article(s) _____ Standard(s) of Practice: _____

Enforcement of the Code of Ethics

- Local – State – National Roles
- All three levels of the REALTOR® organization have different roles in adoption, maintenance and enforcement of the Code of Ethics
- The National Association of REALTORS®, through its Professional Standards Committee and Board of Directors, establish and amend, when necessary, the Code of Ethics. NAR does not enforce the Code
- The Code is enforced, primarily, through the Local Association

Ethics Cases and Arbitration Cases

Ethics Key Question: “If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?”

Arbitration Key Question: “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?”

Timely filed Ethics:

Was the complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later? (*Revised 5/11*)

Timely filed Arbitration:

Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later? (*Revised 4/92*)

The Ethics Enforcement Process

- Filing a Complaint - Who can file a complaint?
- ✓ Written complaint filed
- ✓ The Grievance Committee reviews (Grievance committee is a screening committee comprised of members of the association appointed to the committee)
- ✓ 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?" If yes, then
- ✓ Referred to the Professional Standards Hearing Panel
- ✓ Function is to conduct a full "due process" hearing with sworn testimony, witnesses and evidence.
- ✓ Hearing Panel is comprised of members of the Professional Standards Committee.
- ✓ 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.
- ✓ 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).

Authorized Discipline (and administrative processing fees)

- ✓ Letter of Warning
- ✓ Letter of Reprimand
- ✓ Education
- ✓ Fine not to exceed \$15,000
- ✓ Probation for one year or less*
- ✓ Suspension for not less than 30 days nor more than one year
- ✓ Expulsion from membership for period of one to three years
- ✓ Suspension or termination of MLS privileges.
- ✓ Cease and Refrain
- ✓ Administrative processing fee (if found in violation) not to exceed \$500 ("Court Costs")

* Probation is not really a form of discipline. The fact that one or more forms of discipline will be held in abeyance during a probationary period does not bar the imposition of other forms of discipline which will not be held in abeyance.

Monetary Disputes – The Arbitration Process

- ✓ Arbitration Request filed
- ✓ Mediation is offered upon receipt of the Arbitration Request (if not before)
- ✓ Mediation is a voluntary process unless mandated by the board.
- ✓ Either party can request that it be reviewed by Grievance committee first to determine arbitrability
- ✓ 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.
- ✓ If no settlement is reached, the case goes to Grievance Committee to determine arbitrability or, if they have already processed, the case is forwarded to the Professional Standards Committee for the arbitration hearing.

Article 17 of the Code of Ethics

- Arbitration is conducted under Article 17 of the Code of Ethics and the state arbitration statute (if any)
- Specifies Contractual Disputes or specific non-contractual disputes as outlined in Standard of Practice 17-4)
- Mandatory between REALTORS® (principals) associated with different firms;
- Arising out of their relationship as REALTORS®

The Professional Standards Hearing Panel

- Conducts a full “due process” hearing with sworn testimony, witnesses, evidence and counsel(may or may not be present)
- After the hearing, the Hearing Panel decides which REALTOR® is entitled to the award
- Standard of proof in an arbitration hearing is a “preponderance of the evidence”
- Standard of proof in an ethics hearing is “clear strong and convincing”
- Effective January 1, 2016, if an award has been rendered, within ten (10) days following transmittal of the award, the nonprevailing party must either:

pay the award to the party(ies) named in the award

or

deposit the funds with the professional standards administrator to be held in an escrow or trust account maintained for this purpose

Note: Failure to satisfy the award or to deposit the funds with the board within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors

Concepts of Due Process

- Fundamental idea of fairness
- Principles of Due Process - How to Provide It.
 - ✓ Right to know nature of complaint/arbitration in advance.
 - ✓ Opportunity to prepare an adequate defense.
 - ✓ Right to call witnesses.
 - ✓ Right to present evidence/testimony.
 - ✓ Right to cross-examine witnesses called by other side.
 - ✓ Right to have legal counsel present.
 - ✓ Right to a hearing before an impartial peer panel.
 - ✓ Right to an appeal

Concepts of Procuring Cause in Arbitration

A general legal definition for procuring cause from *Black's Law Dictionary*, Fifth Edition,

The proximate cause; the cause originating a series of events which, without a 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."

A broker is the procuring cause of a sale if he or she initiates a series of continuous events that result in a sale . . . courts insist that the full commission go to the broker who was the primary, proximate and procuring cause of the sale. -- From Real Estate Law, Second Edition, Gibson

Arbitration Guidelines (Suggested Factors for Consideration by a Hearing Panel in Arbitration),

Appendix II to Part Ten of the CEAM, include the following.

Factor #1: No predetermined rule of entitlement

- Multiple Listing Service owned by, operated by or affiliated with a Board, which establishes, limits or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership."
- Matters such as who showed the property first, who wrote the successful offer and the existence of an agency relationship with the buyer are not, in themselves, exclusive determiners of procuring cause/entitlement.

Factor #2: Arbitrability and appropriate parties

- Questions of arbitrability and appropriate parties named can be considered by panel

Factor #3: Relevance and admissibility

- Possible ethics violations in arbitration hearings:
 - (1) can be considered as part of the evidence
 - (2) cannot be used to withhold an otherwise substantiated award
 - (3) should be considered only as one of the many potentially relevant factors in the decision
- Generally, state law controls
- Any relevant evidence is generally admissible

NOTE: Arbitration hearing panels do not make referrals of ethical concerns that arise during a hearing.

Factor #4: Communication and contact

- **Abandonment:** “Whether the broker’s inactivity, or perceived inactivity, may have caused the purchaser to reasonably conclude that broker had lost interest or disengaged from the transaction.” -- *Code of Ethics and Arbitration Manual*
- **Estrangement:** “Whether the broker engaged in conduct or alternatively failed to act when necessary which caused the purchaser to terminate the relationship this can be caused, among other things, by words or actions or lack of words or actions when called for.” -- *Code of Ethics and Arbitration Manual*

Factor #5: Conformity with State law

Factor #6: Consideration of entire course of events (“The Questions”)

The Arbitration Worksheet!

A great tool
Not a score card



Get ready to play Kahoot!

Get out your cell phones, tablets, I pads or computers!

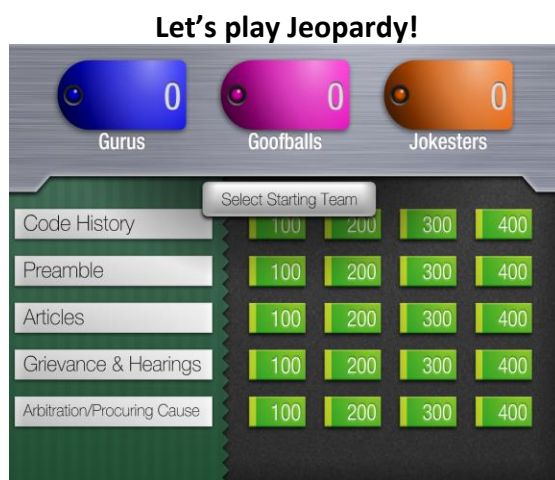
Go to Kahoot.it. Let’s get your opinion on who is procuring cause of this sale.

A word about Mediation.....

- Effective January 1, 2002, enforcement of the Code of Ethics also requires member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met.
- ✓ voluntary process (unless board has adopted policy to mandate) 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.
- ✓ Mediation is offered upon receipt of an Arbitration Request
- ✓ Either party can request that it be reviewed by Grievance committee first to determine arbitrability
- ✓ 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.

So what is an ombudsman program?

- Effective January 1, 2016, every local and state association of REALTORS® was required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers.
- An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding.
- The ombudsman process usually involves parties who have not filed an ethics complaint or arbitration request, but have experienced a breakdown in communication requiring informal resolution (although an ombudsman may also be used where a complaint has been filed). Often the ombudsman functions as an intermediary who communicates the concerns of one party to the other over the phone, so a positive relationship can be restored.



Diane K. Disbrow
(Ocean County, New Jersey)



Diane Disbrow has been active in real estate for 38 years, and holds designations as an Accredited Buyer Representative (ABR), Certified Real Estate Brokerage Manager (CRB), Certified Residential Specialist (CRS), Graduate REALTORS® Institute (GRI) and Resort and Second Home Property Specialist (RSPS) Seller Representative Specialist (SRS), Senior Real Estate Specialist (SRES), e-Pro®, Real Estate Negotiation Expert (RENE) and Pricing Strategy Advisor (PSA)

Diane and her husband, Harry, are former owners of BayShore Agency in Southern Ocean County, New Jersey and most recently became part of Coldwell Banker Riviera Realty. The couple has co-authored two books that will help real estate buyers and sellers. Diane also is the owner and director of Shore Real Estate

Academy.

Diane has served as President of the Ocean County Board of REALTORS®, which named her 1988 “REALTOR-ASSOCIATE®-of-the-Year” and 2001 “REALTOR®-of-the-Year”. Active at all levels of the REALTOR® organization, she has either served as chair or been a member of a variety of state and local association committees, including Grievance, Professional Standards, Risk Management/License Law, Presidential Advisory Group on Agency, and the Real Estate Commission’s Agency Task Force. At the National level, she has chaired and served as a member of numerous committees and forums, including the Professional Conduct Working Group, Professional Standards Forum, Interpretations and Procedures Subcommittee, Professional Standards Committee, Risk Management Committee and the Board of Directors. She was the chair of the Amicus Brief Advisory Board in 2013, chair of the Expedited Ethics Enforcement Workshop in 2014 and is served for a second time, in a leadership capacity of the Professional Standards Committee as the 2015 Chair and 2016 Chair of the Professional Standards Interpretations and Procedures Advisory Board. Diane was the 2017 Law and Policy Liaison.

Diane has presented numerous educational programs for the NATIONAL ASSOCIATION OF REALTORS® and for various state and local associations throughout the country.

In March 2009 she was honored by the Girl Scouts of the Jersey Shore as a “Woman of Achievement.” In 2010, she received the “Encore Award” for her hard work and contributions to non-profit organizations. She is the 2012 second place recipient of the Good Neighbor Award presented by the New Jersey Association of REALTORS® for her work with the Atlantic City Rescue Mission. Diane was honored to be the 2013 recipient of the Ocean County Board of REALTORS® “Wall of Fame”.

Diane, her husband of 34 years, her two daughters, Emily (23) and Rachel (20), and one very spoiled dog reside in Tuckerton, New Jersey.