

New Jersey Brokers & Salespersons

CONTINUING EDUCATION

Real Estate Ethics

Course Number C20200486 | 3 CE HOURS

PDH Real Estate

COURSE DESCRIPTION:

Welcome to PDH Academy course *Real Estate Ethics*. This course provides the foundation for ethical conduct in real estate and incorporates the National Association of REALTORS® Code of Ethics, the Pathways to Professionalism, the enforcement of professional standards and arbitration as well as the resolution process. Special emphasis is placed on commonly misunderstood Standards of Practice and some of the Standards of Practice that agents don't seem to know about at all (including the newer ones).

The eight learning objectives of this course are as follows:

1. Compare and contrast general business ethics to the REALTOR® Code of Ethics
2. Distinguish key aspirational concepts found in the Preamble to the NAR Code of Ethics
3. Interpret the concepts established in Articles 1, 3, 10, 11, 12, 15, and 16 of the Code of Ethics
4. Analyze through case studies possible violations of the Code of Ethics related to the Articles cited above
5. Summarize the professional standards process for enforcing the Code of Ethics including the duty to arbitrate
6. Recognize critical elements of due process as they relate to Code enforcement
7. Support factors considered by hearing panels in procuring cause disputes
8. Apply some professional courtesies described in the Pathways to Professionalism

IMPORTANT INFORMATION

To enhance comprehension, review questions will be asked throughout the course. These review questions will NOT be graded. Final exam questions can be found at the beginning of the course. These questions will be graded to check for mastery of the course material. If you do not pass the final exam you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at support@pdhacademy.com.

After completing the course and final exam, we ask that you take our course survey found at the end of the book to help us continue to provide high-quality continuing education.

Real Estate Ethics Final Exam

1. **Since its inception, the REALTOR® Code of Ethics has required**
 - a. Respect for other brokers' exclusive relationships with clients
 - b. Cooperation among REALTORS®
 - c. Only a
 - d. Both a and b
2. **In any instance where the Code of Ethics and the law conflict, which takes precedence?**
 - a. The Code of Ethics
 - b. The Law
 - c. Decided by an administrative law judge
 - d. Decided by a majority vote of the local REALTOR® Board of Directors
3. **The current Code Of Ethics is comprised of "Duties to:"**
 - a. Clients, Consumers and MLS Participants
 - b. Clients, Customers and Consumers
 - c. REALTORS®, Appraisers and the Public
 - d. Clients & Customers, the Public and other REALTORS®
4. **Article 1 of the Code of Ethics reminds us of the fiduciary duties REALTORS® owe their clients as well as the obligation to _____:**
 - a. Protect and promote the interests of customers
 - b. Treat all parties honestly
 - c. Follow the Golden Rule
 - d. Treat customers and clients equally
5. **When entering into a listing contract REALTORS® must advise sellers/landlords of which of the following?**
 - a. Company policies regarding compensation and cooperation
 - b. The fact that buyer agents will represent them if there is compensation offered
 - c. Possible dual agency if an agent from another firm brings a buyer client
 - d. All of the above
6. **If your seller accepts an offer that is weak and has a lot of contingencies, then _____:**
 - a. You still must disclose to any broker seeking cooperation the fact that there is an accepted offer
 - b. It's a good idea to keep it quiet in case a better offer comes in
 - c. You must immediately post the price and terms on the MLS comments
 - d. You should advise the seller to rescind his acceptance
7. **Article 12 of the Code of Ethics states that REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in which of the following?**
 - a. Advertising
 - b. Marketing
 - c. Other representations
 - d. All of the above
8. **REALTOR® Alex checks the MLS for new listings and then mails a letter to the owners touting his sales excellence and track record. This action is _____:**
 - a. Super marketing and speaks to his success
 - b. Commonly known as "farming" and is very popular among new agents
 - c. Most likely tortious interference with the contract of another broker
 - d. A violation of Article 15 of the Code of Ethics
9. **When Sandra Salesperson previews new listings or open houses she follows up with a letter to the owner asking that they consider hiring her if and when the current listing expires. This is which of the following?**
 - a. A great marketing idea
 - b. Legal since she's not interfering with the current listing contract
 - c. A violation of Article 16 of the Code of Ethics
 - d. A misdemeanor
10. **Without a termination agreement that states otherwise, REALTORS® who leave their current firm cannot do which of the following?**
 - a. Continue to sell real estate in the same territory
 - b. Ask other agents to leave the firm to start a new brokerage company
 - c. Induce current clients to cancel their exclusive contracts with the firm
 - d. Sell real estate for a minimum of 6 months
11. **The two additional protected classes that have been added to the Code of Ethics in the last several years are _____ and _____.**
 - a. Sexual Orientation and Gender Identity
 - b. Sexual Orientation and Families with Children
 - c. Sexual Orientation and Lawful Source of Income
 - d. Sexual Orientation and Immigration Status

12. **Many difficulties between real estate professionals (whether REALTORS® or not) result from which of the following?**
- Misunderstanding
 - Miscommunication
 - Lack of Communication
 - All of the above
13. **Salespeople, before deciding to file an ethics complaint, should do which of the following?**
- Read the NAR Code of Ethics and Arbitration Manual
 - Consult with their manager or principal broker
 - Consider if it's worth the time and effort
 - Write down the pros and cons of complaining about other REALTORS®
14. **The types of hearings that can be afforded to REALTORS® are which of the following?**
- Ethics and Arbitration
 - Ethics and Sanctions
 - Ethics and Depositions
 - Ethics and Summary Proceedings
15. **Who can file an ethics complaint?**
- Salespeople who are REALTORS®
 - Brokers who are REALTORS®
 - The public
 - All of the above
16. **The Ombudsman's role is to do which of the following?**
- Provide enhanced communication and problem solving
 - Adjudicate complaints in a quick, informal fashion
 - Determine if an ethics violation has even occurred
 - All of the above
17. **The Grievance Committee does not do which of the following?**
- Attend Professional Standards training
 - Rule on the alleged violation
 - Have to be REALTOR® members
 - All of the above
18. **Authorized discipline in an Ethics case can include which of the following?**
- Letter of reprimand, suspension from MLS and monetary damages
 - Letter of warning, probation for up to one year, and a fine of up to \$5,000
 - Letter of warning, probation for up to one year, and a fine of up to \$15,000
 - None of the above
19. **The real purpose of authorized discipline in an Ethics Hearing is to do which of the following?**
- Teach a lesson to the non-prevailing party
 - Restore faith in the Code of Ethics
 - Separate the ethical members from the non-ethical ones
 - Educate the respondent and to vindicate the Code of Ethics
20. **Arbitration is about**
- Ethical conduct
 - Wrongdoing
 - Illegal boycott
 - Money
21. **A principal broker may file an arbitration complaint against which of the following?**
- REALTOR® principal broker from another firm
 - REALTOR® principal brokers in more than one firm
 - A REALTOR® firm itself
 - All of the above
22. **Which of the following is true regarding a procuring cause arbitration hearing?**
- Brokers may wind up splitting the monies in dispute
 - Agents may attend with their broker's permission
 - The prevailing party may appeal
 - All of the above
23. **There is no predetermined rule of entitlement in which of the following?**
- The Standard of Practice 11-1
 - An ethics hearing
 - A procuring cause case
 - Real estate
24. **In the Pathways to Professionalism, Respect for Property includes which of the following?**
- In wintry weather, bring a snow shovel to clean off walkways
 - Allow unaccompanied access to a home that buyer is already in contract to buy
 - When showing property keep, all members of the group together
 - All of the above
25. **The Pathways to Professionalism is which of the following?**
- Voluntary
 - Not all-inclusive
 - Not able to be used as an ethics complaint
 - All of the above
26. **The REALTOR® Code of Ethics**
- Protects the buying and selling public
 - Protects the general public
 - Promotes a competitive real estate market place
 - All of the above
27. **In an arbitration case, salespersons cannot file a complaint because _____.**
- They aren't experienced enough to undertake this task
 - License laws prohibit them from taking actions of any kind
 - Only principal brokers are permitted to receive commissions
 - Buyers generally don't respect their opinion
28. **An ethics complaint must cite which of the following?**
- One or more articles of the Code of Ethics
 - At least one Standard of Practice to clarify the cited article
 - An article and a corresponding Standard of Practice
 - Either an article or a Standard of Practice
29. **What often resolves questions, differences, and concerns among REALTORS®?**
- Open, constructive discussion
 - Private, legal advice
 - Threats of filing a complaint
 - All of the above
30. **Article 3 of the Code of Ethics does not include the obligation to share which of the following?**
- Commissions
 - Fees
 - Compensation
 - All of the above

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COURSE INTRODUCTION

This course is about real estate ethics and more specifically about the Code of Ethics that was created by the National Association of REALTORS® or NAR. But what does the word “ethics” mean? Is it the same for everyone? According to Merriam Webster Dictionary, the first known use of the word “ethic” was in the 14th century. It derives from the Middle English “ethik” and the Middle French “ethique” and the Latin “ethice” and the Greek “*ēthikē*, from *ēthikos*.”

Defined, “ethics” can be

- The discipline dealing with what is good and bad and with moral duty and obligation
- A set of moral principles: a theory or system of moral values
- The principles of conduct governing an individual or a group
- A guiding philosophy
- A set of moral issues or aspects (as rightness)
- A consciousness of moral importance

For most of us, our ethics relates to individual moral values that have been influenced by our parents and families, school experiences, peers, houses of worship, and clubs and groups. In addition, ethics applies to industry codes, legal standards and company policies. Clearly each of us may vary in our interpretation and willingness to embrace various ethical principles. This course is not meant to judge or critique each of our own “personal morals or ethics.” It is intended, though, to state the *responsibilities* and *obligations* created under the NAR Code of Ethics.

MODULE 1

History and Background of 1913 NAR Code of Ethics

In the year 1900, under President William McKinley, the US had 45 states and a population of 76 million. Women could vote in only 4 states (It would be 20 years before the 19th Amendment was passed.) The air conditioner and the vacuum cleaner were being introduced. So were the first hamburger sandwich and the Hershey Bar! There were no real estate license laws in the US, and the real estate business was one of speculation, exploitation and disorder. Real estate men (There were no women in the real estate business then.) were peddlers, and many were less than honorable. Some sold properties over value to unassuming buyers, some tricked sellers into selling them properties for bargain prices so they could flip them and make huge profits. Some were even selling land under water to long distance speculators who never knew the truth. There were no license laws or

regulations and no boards or associations to oversee the business.

Enter a group of real estate men in the Chicago area who decided it was high time for real estate men throughout the country to form a national association and raise the bar on what they believed was an honorable profession. In May of 1908 they formed *The National Association of Real Estate Exchanges*.



To get a sense of how long ago this was, here’s a photo of the first Board of Directors at a meeting in Chicago in 1909.



The Association's first Board of Directors, 1909.

Then, in 1913, they adopted the first “Code of Ethics” to establish a professional standard of conduct. In 1916, *The National Association of Real Estate Exchanges* changed its name to *The National Association of Real Estate Boards*, and the current name was adopted in 1974.

Today at their YouTube channel, the NAR describes themselves as follows:

“The National Association of REALTORS®, “The Voice for Real Estate,” is America’s largest trade association, representing 1 million members, including NAR’s institutes, societies and councils, involved in all aspects of the residential and commercial real estate industries.

Our membership is comprised of residential and commercial REALTORS®, who are brokers, salespeople, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,400 local associations/boards and 54 state and territory associations of REALTORS®. They are pledged to a strict Code of Ethics and Standards of Practice.

Working for America’s property owners, the National Association provides a facility for professional development, research and exchange of information among its members and to the public and government for the purpose of preserving the free enterprise system and the right to own real property.”

The term “REALTOR®” was created to differentiate all real estate licensees from those who also belong to the National Association of REALTORS®. While the public generally does not make the differentiation and overwhelmingly refers to *any* real estate agent as a “realtor,” the words are not synonymous. A licensed real estate agent may be a REALTOR® member, but so can a real estate appraiser or property manager. The NAR has had many legal battles over the claim that the term “realtor” is generic, but so far they have prevailed. The only people who may claim to be “REALTORS®” are those who are members in good standing of the National Association of REALTORS®. Note, too, that the NAR feels very strongly that the word must be capitalized and include the ® symbol. In some advertising situations the NAR permits REALTOR or Realtor® or even Realtor.

According to the NAR Membership Marks Manual:

“The term REALTOR® has one, and only one, meaning: REALTOR® is a federally registered collective membership mark which identifies a real estate professional who is member of the NATIONAL ASSOCIATION OF REALTORS® and subscribes to its strict Code of Ethics. The single most important rule governing the MARK is that it may only be used to convey this meaning, and never used to convey another meaning.”

To learn more about the trademark issue, feel free to visit the NAR YouTube video called

“*Why NAR Protects the REALTOR® Trademark*” at: www.realtor.org/videos/why-nar-protects-the-realtor-trademark

Membership benefits of NAR include education, publications, specialty designations, government advocacy, technology innovation, benefits program, networking, and legal information. But with these benefits come member responsibilities including the Code of Ethics, arbitration, protecting clients, true pictures in advertising, respecting agency, avoiding misrepresentation, proper disclosures, no discrimination, and not making false statements about competitors.

There is only one way to properly pronounce the term REALTOR®: REAL- tor (ré'al-tôr').

Many consumers and even some real estate agents who are REALTOR® members mispronounce the term by adding another syllable. They say REAL-A-TER instead of REAL-TOR. If you happen to be a member of NAR, please remember to pronounce the term correctly!

The FIRST version of the Code of Ethics (1913) is provided here for historic, informational purposes only. Note the actual CURRENT *Code of Ethics and Standards of Practice of the National Association of REALTORS®* is what will be further reviewed and discussed throughout this course.

Ethics of the Real Estate Profession

Adopted by National Association of Real Estate Exchanges

Adopted 1913

DUTIES TO CLIENTS

1. Be absolutely honest, truthful, faithful and efficient. Ever bear in mind that the broker is an employee, and that his client is his employer and is entitled to the best service the real estate men can give – his information, talent, time, services, loyalty, confidence and fidelity.
2. Be conservative in giving advice and, where not reasonably well posted, refrain from giving opinion of value.
3. Inspect client's property, if possible, before offering it for sale, and always inform the buyer if that has not been done.
4. Do not depreciate the price of property unless the price is too high; ask that the price be reasonable, and tell the owner that it must be so if he expects his agent to make an attempt to sell it.
5. Obtain sole agency, in writing, if it is property worthy of a special effort to sell.
6. Advocate that the real consideration be shown in a deed to property, or one dollar and other valuable considerations.
7. Do not give special information to inquiries over the telephone, or otherwise, unless they are willing to give their names and addresses. Let them understand that the broker deals in the open, and expects them to do likewise.
8. An agent should not ask for a net price on property, unless he intends to buy it himself, and so notifies his client.
9. He should request his client not to discuss price with the prospective buyer, but persuade his client to refer the matter to the agent, - thus strengthening the agent's position with the buyer, and thus helping the agent to make a better deal for his client.
10. An agent should always exact the regular real estate commission of the Association of which he is a member, and always give his client to understand at the beginning that he is entitled to such and expects it.

DUTIES TO OTHER BROKERS

1. 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. Advise an owner to renew a selling contract with some other agent, rather than solicit the agency, provided the other agent has made a reasonable attempt to sell the property during the life of his contract.
3. Always be loyal, square, frank and earnest in the matters that require the co-operation of brokers, and always speak kindly of competitors, refusing to pass judgment on others from hearsay evidence.
4. Advertise nothing but facts, and be careful not to criticize by any method a competitor's proposition.
5. Give an honest opinion concerning a competitor's proposition when asked to do so by a prospective purchaser, even though such opinion will result in a sale by the competitor.
6. Refuse to put a "For Sale" or "For Rent" sign on property on which a competitor already has his sign, provided the placing of such sign was through the authorization of the owner.
7. If an agent cannot efficiently handle a proposition, he should refer the matter to some competitor who can.
8. Solicit co-operation of other members of the Association in selling Sole Agency listings, unless there is a deal on, or there is some particular buyer in sight, to whom a sale is expected, and always be ready and willing to divide the regular commission equally with any member of the Association who can produce a buyer for any client.
9. Invoke friendly arbitrations by the Real Estate Association rather than through the courts of law, in settling differences with other agents.
10. Do not disregard the rights of other agents. Never refuse to work through an owner's regular agent, or refuse to try to sell his property to a live buyer unless handling the entire deal and getting all the commission.
11. A broker will not put his name in the newspapers in connection with a deal unless really representing a least one of the parties and receiving a part of the commission, for such publicity is a sham, and the result is to the disadvantage of all.
12. When a sale or exchange is handled by two agents, each agent shall be given due credit in the report of such sale or exchange.
13. Do not relay property, - i.e., do not submit to one agent or broker that which is obtained from another unless the case be exceptional, in which case the third agent should know that the property

is not obtained direct. A broker who relays represents neither side, and is not entitled to the same consideration as either of the other agents.

..... *end of 1913 Code of Ethics*

The Code is a living document that undergoes regular revision to keep it updated and relevant as the real estate industry evolves, so today's Code of Ethics looks much different from the one that was adopted in 1913. However, since its inception, the Code has required arbitration of contractual disputes between/among REALTORS®, respect for other brokers' exclusive relationships with clients, and cooperation between/among REALTORS®. In fact, the original Code of Ethics actually became the basis for many license laws that followed. And, in 1924, the NAR made adherence to the Code of Ethics a mandatory membership requirement. Effective 2001, the NAR mandated that every four years all members must complete an approved Code of Ethics course of a minimum of 2.5 hours. Beginning 2017, the course must be completed every two years. This particular course follows all the NAR guidelines for content and learning objectives.

MODULE 2

Current Code of Ethics and Structure

Take out your copy of the 2016 Code of Ethics, and have it handy throughout the course.

If you do not have a current copy of the Code of Ethics, you can find a digital copy of the Code at the following link: (Online: www.realtor.org/governance/governing-documents/the-code-of-ethics)

In the original Code of Ethics there were two sections: "Duties to Clients" and "Duties to Other Brokers." The current Code of Ethics has three major sections and 17 Articles:

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

The 17 articles (and there have been more over the years) are broad statements of ethical principles. All but 4 of the 17 articles have "Standards of Practice" (SOP) which serve to support, amplify and interpret the Articles under which they are written. The four articles that need no further amplification are Articles 5, 7, 8 and 13. Take a look at them now, and you'll easily understand their clarity and meaning. To paraphrase, Article 5 reminds us that we must disclose any present or contemplated interest in any property to all the parties. Article 7 permits us to accept compensation from more than one party as long as we disclose to all the parties and have informed consent from our client(s). Article 8 prohibits commingling of funds, so we must keep monies from our customers or clients in a separate escrow account. And Article 13 warns us

of the legal dangers of delving into the unauthorized practice of law.

This course does not restate and analyze all 17 Articles of the Code of Ethics, but later we will delve into eight of them and point out some Standards of Practice (SOPs) that are more recent or are often misunderstood. For a brief review, though, here is a summary of the 17 Articles of the NAR REALTOR® Code of Ethics:

Summary of the Articles of the REALTOR® Code of Ethics:

Article 1 – Protect and promote your client's interests, but be honest with all parties.

Article 2 – Avoid exaggeration, misrepresentation, and concealment of pertinent facts. Do not reveal facts that are confidential under the scope of your agency relationship.

Article 3 – Cooperate with other real estate professionals to advance client's best interests.

Article 4 – When buying or selling, make your position in the transaction or interest known.

Article 5 – Disclose present or contemplated interest in any property to all parties.

Article 6 – Avoid side deals without client's informed consent.

Article 7 – Accept compensation from only one party, except with full disclosure and informed consent.

Article 8 – Keep the funds of clients and customers in escrow.

Article 9 – Assure, whenever possible, that transactional details are in writing.

Article 10 – Provide equal service to all clients and customers.

Article 11 – Be knowledgeable and competent in the fields of practice in which you ordinarily engage. Obtain assistance or disclose lack of experience if necessary.

Article 12 – Present a true picture in your advertising and other public representations.

Article 13 – Do not engage in the unauthorized practice of law.

Article 14 – Be a willing participant in Code enforcement procedures.

Article 15 – Ensure that your comments about other real estate professionals are truthful and not misleading.

Article 16 – Respect the exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with their clients.

Article 17 – Arbitrate contractual and specific non-contractual disputes with other REALTORS® and with your clients.

The Preamble of the NAR Code of Ethics

Before we sift through more of the Articles and Standards of Practice, let's first take a look at the *Preamble*, or introduction, to the COE. As you read it in its entirety, you will notice it connotes the aspirational concepts that set REALTOR® members apart from ordinary licensees. And who would not feel moved by the powerful opening sentence: "Under all is the land."

But the original 1913 Code had no Preamble. In 1924 NAR decided there should be an introduction to the COE, so Arthur H. Barnhisel, a prominent REALTOR® and Presbyterian minister from Tacoma, WA submitted his text which set forth the social responsibility of the association and local real estate boards who make up its membership. With its inspirational portrayal of the nation's land and the REALTOR®'s role in ensuring its "highest use" and "widest distribution," Barnhisel's preamble easily won the committee's vote. Revised in 1955 and again in 1961, the Preamble we know today took final shape in 1994. But many of Barnhisel's poetic and inspirational phrases remain.

Take a moment now to read the Preamble in its entirety:

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals

promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

Less than 500 words, the Preamble touts the Golden Rule as well as a wonderful affirmation that "the term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal."

Keeping the Code Relevant

Each year at the NAR Annual Conference & Expo, the Professional Standards Committee meets to vote on any suggested amendments or additions to the Code, the Standards of Practice and/or the COE & Arbitration Manual which covers policy and procedures. Because the real estate business changes and evolves, it should be no surprise that the COE has been amended over 40 times since it was adopted 103 years ago!

William D. North, a former EVP and General Counsel for the NAR and a prolific writer, made this statement in his *The Gift of Vision*:

"Because the Code is a living document and real estate is a dynamic business and profession, the law need never be its substitute. So long as the aspiration to better serve the public remains the underlying concept of the Code it must evolve and grow in significance and importance consonant with but independent of the law. To REALTORS®, the Code of Ethics offers the lessons of hindsight, the guidance of foresight, and the understanding of insight—A Rare Gift of Vision."

Source: *The Gift of Vision, 1978, by William D. North, former Executive Vice President and General Counsel of NAR*

Before we delve into some of the key articles in the Code, be reminded that, 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.

review questions...

The following questions will NOT be graded. They are asked to help you judge your comprehension of the course material.

- For most of us, our ethics relates to individual moral values that have been influenced by our**
 - Parents
 - Peers
 - School experiences
 - All of the above
- In May of 1908 a group of real estate men in the Chicago area formed**
 - The National Association of REALTORS®
 - The National Real Estate Group
 - The National Association of Real Estate Exchanges
 - The National Council of Real Estate
- The first Code Of Ethics was adopted in**
 - 1908
 - 1913
 - 1925
 - 1974
- The National Association of REALTORS® is**
 - America's largest trade association
 - Bound by a strict Code of Ethics
 - Comprised of members who are engaged in various real estate activities
 - All of the above
- Since its inception in 1913 the REALTOR® Code of Ethics has required**
 - Membership dues
 - Adherence as a membership rule
 - Arbitration of contractual disputes among members
 - All of the above
- To further support and amplify many of the Articles of the Code of Ethics, there are**
 - Standards of Application
 - Standards of Performance
 - Standards of Use
 - Standards of Practice
- The Code of Ethics has been amended over 40 times since 1913 because**
 - The real estate business changes and evolves
 - The REALTORS® Political Action Committee (RPAC) has voted to do so
 - State and Federal laws have mandated the changes
 - The original charter calls for amendments every two years
- The Golden Rule is an aspirational concept noted in**
 - Article 1
 - Article 10
 - The Preamble
 - The Prologue
- Because the real estate business changes and evolves,**
 - Local Boards can choose to amend certain Articles
 - The Code has become obsolete and irrelevant
 - The Code has been amended over 40 times
 - All of the above
- Before 1900 there were no real estate license laws in the US.**
 - True
 - False
- REALTORS®**
 - Urge the exclusive representation of clients
 - Willingly share the fruits of their experience
 - Strive to eliminate practices which may damage the public
 - All of the above
- True or false? The term REALTOR® is synonymous with "real estate licensee."**
 - True
 - False
- What is NAR's Trademark?**
 - REALTOR®
 - R®
 - Member®
 - NAR®
- What is the danger in transforming a trademark into a generic trademark?**
 - Loss in value
 - Becomes a Common name
 - Increases in value
 - Both a and b
- What is the member test for the REALTOR® trademark?**
 - A test administered by the trademark office
 - Replacing the word REALTOR® with member and not Real Estate Agent
 - Replacing the word REALTOR® with Real Estate Agent and not member
 - A litmus test devised by NAR
- What can you do to help protect the REALTOR® trademark?**
 - Educate/ reeducate the public
 - File a trademark suit
 - Deny potential challengers
 - Both a and c

Review Question Answers:
1. d 2. c 3. b 4. d 5. c 6. d 7. a 8. c
9. c 10. a 11. d 12. b 13. a 14. d 15. b 16. d

MODULE 3

Frequently Misunderstood Standards of Practice (SOPs)

In this section we'll study Articles 1, 3, 12, 15 and 16 and then look at some Standards of Practice that often are misunderstood or perhaps overlooked.

Article 1 and Frequently Misunderstood Standards of Practice 1-12 and 1-13

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. (Amended 1/01)

Article 1 reminds us of the fiduciary duties and obligations we have toward our clients. We must protect their interests even above our own. And that does not preclude our obligation to treat all parties, including customers, honestly. (For those of you who need a quick agency brush-up, let's be reminded that we work FOR clients and WITH customers.)

• Standard of Practice 1-12

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

- 1. 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;*
- 2. 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*
- 3. Any potential for listing brokers to act as disclosed dual agents, e.g. buyer/tenant agents. (Adopted 1/93, Renumbered 1/98, Amended 1/03)*

Example: Listing Agent Larry is at the home of Sam and Sally Seller who have decided to hire him to get their home sold. They feel very comfortable and encouraged by his confidence and experience. Because Larry senses this is a slam-dunk, he rushes through the listing contract and doesn't fully explain how the commission is split among the cooperating brokers. He does mention that something called dual agency might occur if he or someone from his company brings in a buyer client, but he adds, "It's no big deal, we do it all the time, so don't even worry about it." He forgets to mention that if buyer agents do show the home, they are working in the interests of their buyer clients even

though a portion of the listing commission will be paid to them should a sale occur. Sam and Sally sign the listing contract.

Later, when dual agents and buyer agents do show the home, Sam and Sally mistakenly think that all the agents are working for them. They confide information about their motivation and willingness to drop the price if need be.

In this example, can you see how Larry harmed his Seller clients by rushing through the listing contract? Have you done this, too? Standard of Practice 1-12 reminds us to take our time at the listing proposal and be certain that the Sellers are totally in sync with the details and the process.

• Standard of Practice 1-13

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

- 1. The REALTOR®'s company policies regarding cooperation;*
- 2. The amount of compensation to be paid by the client;*
- 3. The potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;*
- 4. Any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc., and*
- 5. 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. (Adopted 1/93, Renumbered 1/98, Amended 1/06)*

Much like Standard of Practice 1-12 which is about Seller and Landlord clients, Standard of Practice 1-13 is about Buyer and Tenant clients. So the same duties apply in terms of spending ample time discussing cooperation, compensation, and the possibility of dual agency. But another important aspect of 1-13 is to be sure that the Buyer or Tenant client understands that the fiduciary duty of confidentiality does not extend to every person in the transaction. This means that Sellers, Landlords, and their own agents have no duty of confidentiality.

Article 3 and Frequently Misunderstood Standard of Practice 3-6

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)

Article 3 is about playing nice in the sandbox and

openly welcoming cooperation from the real estate community as well as not duping one another about the amount of commission that the Sellers have agreed to pay a cooperating broker. In the next section we will cover Standard of Practice 3-2 which addresses this, but for now let's talk about Standard of Practice 3-6.

Standard of Practice 3-6 seems to confuse many agents. Simply stated, 3-6 makes every accepted offer a "material fact" which must be disclosed to any agent seeking cooperation. Note that the dollar amount and terms need not be disclosed, but just the fact that there is an accepted offer, even if the offer is weak and/or has unresolved contingencies. Read Standard of Practice 3-6 below, and then we'll see an example.

• Standard of Practice 3-6

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. (Adopted 5/86, Amended 1/04)

Example: Listing Agent Laura has an exclusive listing at 123 Poplar Street. Three days ago she presented an offer to her Seller clients. The offer was less than full price, 95% LTV, and had several contingencies including a Seller concession toward closing costs. The Sellers reluctantly accepted the offer, but since it wasn't ideal, they asked Laura not to mention it to anyone so that the home could be actively shown to more buyers while the various contingencies were being met. Laura, not aware of Standard of Practice 3-6, thought it was a good idea and agreed since she believed she was protecting her Sellers' best interest. A few days later Buyer Agent Betty from another company called to make a showing appointment. Laura confirmed the appointment and never mentioned the first accepted offer. After Betty showed the home to her transferee Buyers who were in town for just one day in order to buy a home, Laura received a call from Betty. "I have a nice offer on your Poplar Street listing," she said to Laura. Laura replied, "Great! It can be a first back-up to the accepted offer we already have." "Back-up!?" Betty exclaimed.

"You didn't tell me there was an accepted offer on this home. I never would have wasted my Buyers' time. They need to buy a home right away. They don't have time to wait around for the first offer to fall through."

While this story can continue and have various endings, and while many of you have probably been involved in similar situations, the very point of Standard of Practice 3-6 hopefully rings clear. *All accepted offers* must be disclosed to any broker seeking cooperation. What Listing Agent Laura should have replied when her Sellers asked her to keep the accepted offer a secret is, "While I understand your desire to keep the home actively on the market to draw in more buyers, my duty of obedience to you is in conflict

with my duty to obey the REALTOR® Code of Ethics which obligates me to disclose an accepted offer to the other brokers even if we continue to show for back-up offers." In fact, if Laura had explained the process to her Sellers at the post-listing interview, she could have reminded them that this was already agreed upon when she was being hired.

Article 12 and Frequently Misunderstood Standard of Practice 12-9

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. (Amended 1/08)

Most real estate agents are aware that it is unethical and often illegal to misrepresent themselves, their services and/or their properties. Blind ads (not identifying themselves or their company when marketing properties) dupe the public. So with the onset of technology and websites, Standard of Practice 12-9 reminds us that REALTORS® must post not only the name of the firm but also the state where they do business in a *readily apparent manner*. This has been interpreted to mean that the public should see the firm name and state as soon as the website opens, and not necessarily have to scroll down to a bottom of a website page to learn this information.

• Standard of Practice 12-9

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. (Adopted 1/07)

Article 15 and Frequently Misunderstood Standard of Practice 15-2

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. (Amended 1/12)

Again, we're talking about "playing nice" with the real estate community. And because of the internet, we are reminded below in Standard of Practice 15-2 that this Article applies to email, texting, websites, social networking (FaceBook, etc.), Twitter and any other technological means.

- **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses and their 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. (Adopted 1/07, Amended 1/12)

Article 16 and Frequently Misunderstood Standards of Practice 16-9, 16-11, and 16-20

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. (Amended 1/04)

We all know it's unethical and illegal to tortuously interfere with the contracts that real estate brokers have with their clients. That means we aren't supposed to solicit someone else's clients to do business with us when the clients have already hired their own broker. Hopefully we would never say to a currently listed Seller or Buyer something like, "Hey, you should have listed your home with me!" or "You should cancel with that broker and list with me!" or "Even though you signed an exclusive Buyer contract, you should buy this home from me!"

There are so many misunderstandings that occur under Article 16 that there are 20 Standards of Practice to further clarify the Article. That's more Standards of Practice than any other Article! (The sum of the Standards of Practice for all 17 Articles currently totals 87.) That's why it really makes sense to re-read ALL the Standards of Practice in Article 16 when you have a minute. But for now, let's highlight 16-9, 16-11 and 16-20.

- **Standard of Practice 16-9**

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. (Amended 1/04)

Example: Bob Broker hears through the grapevine that Sam Jones might be selling his home soon. Before Bob Broker contacts Sam to ask to be hired, he checks the local MLS to see if the home is listed. If it's not, Bob does contact Sam but quickly asks Sam if he, in fact, is already exclusively listed with a broker. These are examples of "reasonable effort."

Example: Sally Salesperson meets Betty Buyer at a social event. When Betty learns that Sally is in real estate she mentions that she just so happens to be looking for a

home. In the conversation that ensues, Sally is sure to quickly ask Betty if she's already in a current, exclusive representation contract with a buyer broker in this area. If Betty says she is, then Sally backs off. (Note that 16-6 would allow Sally Salesperson to have a further discussion as long as it is initiated by the Betty Buyer. Then, Sally could agree to represent Betty after the current agreement expires.)

Here's a Standard of Practice that talks about how we are supposed to behave when we approach a FSBO (For Sale By Owner):

- **Standard of Practice 16-11**

1. *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. (Amended 1/04)*
2. *REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. (Amended 1/98)*

Example: Salesperson Sam Jones sees a For Sale By Owner (FSBO) sign on a property and stops his car. He happens to have a current buyer client who is looking for a home like this one. He knocks on the door, and when the Seller greets him, Sam says, "Hello! I'm Sam Jones from ABC Realty, and I'm not here to ask you to list your home with me. I see you've listed it yourself. I'm working for a Buyer client who very well might be interested in seeing your home." (Depending upon the Agency Disclosure Law in your own state, this might be the time you give the Seller the formal disclosure paperwork that codifies you're a Buyer Broker.)

In the conversation that ensues between Sam and the FSBO Seller, Sam is sure to make it clear if he expects the FSBO Seller to pay his commission, or if he plans to collect his commission from his Buyer client.

Next, Standard of Practice 16-20 is added here to remind agents that they don't "own" their current clients. So if they were to leave their current firm, who keeps the clients? In 16-20 we'll see what's expected of REALTOR® members.

The Termination Contract that agents have with their current broker (And let's hope you have one!) delineates what happens when and if the agent leaves the company to work for another broker. This includes what happens to the agent's current listing inventory of Buyers and Sellers. In the absence of a formal Termination Contract that allows otherwise, the agent must not try to induce the clients to cancel their exclusive contracts in order to follow the agent to the new brokerage firm.

See Standard of Practice 16-20:

- **Standard of Practice 16-20**

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. (Adopted 1/98, Amended 1/10)

MODULE 4

Recently Amended Standards of Practice

This section will include changes made to the Code of Ethics from 2013 through 2016, the last of the four-year cycles that were mandated by NAR membership requirements. The Articles that have been affected for this period are 3, 10, 11 and 12.

(Beginning in 2017 the mandated Code of Ethics training shall be every two years.)

Article 3 and Standard of Practice 3-2

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)

Article 3 is far too often misunderstood and even abused by agents who focus on self-aggrandizement instead of on serving their clients' best interest. Because cooperation does not necessarily include compensation, many agents clash when cooperating. And even when they do agree to share commissions, there have been instances when one agent tries to alter the amount at the last minute. This is why we have Standard of Practice 3-2.

- **Standard of Practice 3-2**

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. (Amended 1/14)

Article 10 and Standard of Practice 10-3

Article 10 lists the nine protected classes to whom all REALTORS® are bound to afford equal and ethical services. The first seven classes are also the federally protected classes under Title VIII of The Civil Rights Act of 1968 and amended in 1988. (We tend to refer to

this as "The Fair Housing Act.") In the Code of Ethics, though, *sexual orientation and gender identity* have been added. If your particular state or locality already protects sexual orientation and gender identity, then you're already in sync.

Note that because Article 10 itself includes nine protected classes, so does Standard of Practice 10-3 which refers to our marketing and advertising. Read it below:

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. (Amended 1/14)

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. (Amended 1/14)

- **Standard of Practice 10-3**

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, sexual orientation, or gender identity. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)

Article 11 and Standard of Practice 11-1

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 assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/10)

Article 11 and Standard of Practice 11-1

This Article has been around for a long time and reminds us to accept assignments within our own areas of competence and expertise. When not qualified to handle a request, it's always best to speak to the principal broker/broker owner or manager who can offer help and/or recommend that the assignment be referred to a more qualified agent or company.

The reason Article 11 is included in this section is because of Standard of Practice 11-1 and the tremendous amount of requests that agents recently have had to perform BPOs (broker's price opinion). These requests are coming from mortgagees who are facing short sales, foreclosures and HARP or other refinances. What is shown next in **bold** is the 2014 amendment to Standard of Practice 11-1 which allows REALTORS® to use the form supplied by the requesting mortgagee rather than following items 1 through 10.

• Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price they must:

1. Be knowledgeable about the type of property being valued,
2. Have access to the information and resources necessary to formulate an accurate opinion, and
3. Be familiar with the area where the subject property is located unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion 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
8. Disclosure of whether and when a physical inspection of the property's exterior was conducted
9. Disclosure of whether and when a physical inspection of the property's interior was conducted
10. Disclosure of whether the REALTOR® has any conflicts of interest (Amended 1/14)

Article 12 and Standard of Practice 12-5 and 12-10

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. (Amended 1/08)

Article 12 and Standard of Practice 12-5 and 12-10

Already discussed in the previous section, Article 12 is about truth in communications, advertising, and marketing. Standard of Practice 12-5 was amended to allow for links where technological areas (like Twitter) won't have enough space to include the firm's full name and state.

• Standard of Practice 12-5

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 either in the advertisement or in electronic advertising **via a link to a display with all required disclosures.** (Adopted 11/86, Amended 1/16)

Again, because of technology, Standard of Practice 12-10 was added to warn us of the dangers of misleading the public by what we post on the internet and by the URLs, domain names, and metatags we select. Items 1 through 3 were adopted in 2007, but items 4 and 5 below were added in 2013 just to cover all the bases!

• Standard of Practice 12-10

REALTORS®' obligation to present a true picture in their advertising and representations to the public includes Internet content posted, and 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 and other content in any way that produces a deceptive or misleading result;
3. Deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
4. Presenting content developed by others without either attribution or without permission, or

5. To otherwise mislead consumers. (Adopted 1/07, Amended 1/13)

So now that we've covered several of the Articles and SOPs, let's move to the area of enforcement. That is, how are complaints handled? Are there fines and penalties? And who decides?

review questions...

The following questions will NOT be graded. They are asked to help you judge your comprehension of the course material.

1. Per Standard of Practice 1-13, buyer agents need to advise buyer client prospects that _____:
 - a. The duty of confidentiality does not necessarily extend to sellers
 - b. Advertising costs are built into the buyer broker fee
 - c. Being a customer instead of a client gives a buyer more freedom
 - d. All of the above
2. Standard of Practice 3-6 essentially makes all accepted offers _____:
 - a. Confidential
 - b. A material fact
 - c. Unconditional
 - d. Contractual
3. According to Standard of Practice 3-6, REALTORS® must disclose all accepted offers to which of the following?
 - a. Only others from their own MLS
 - b. Appraisers who ask for comps as long as the appraiser is a REALTOR®
 - c. The local assessor's office
 - d. Any broker seeking cooperation, even from another area
4. True or false? REALTOR® websites must disclose the firm's name and state(s) of licensure in a readily apparent manner.
 - a. True
 - b. False
5. Posting a rant on Facebook about how a cooperating agent never showed up at a scheduled appointment to show your listing _____:
 - a. Is okay if it's true
 - b. Is fine if the agent hits reply and offers an explanation
 - c. May be a violation of Article 15 of the Code of Ethics
 - d. May be a violation of Article 17 of the Code of Ethics

6. Standard of Practice 15-2 includes the duty to not repeat false or misleading statements about other REALTORS® in which of the following ways?
 - a. In letters
 - b. Online
 - c. In person
 - d. All of the above
7. True or false? 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.
 - a. True
 - b. False
8. When acting as buyer broker, at first contact with a For Sale By Owner it's a good idea to do which of the following?
 - a. Pretend you're a buyer to get the info you need
 - b. Disclose that you're calling on behalf of your buyer client
 - c. Try to get the listing
 - d. All of the above
9. According to Standard of Practice 3-2, any change in compensation offered for cooperative services must be communicated to the other REALTOR® _____.
 - a. Within 10 days after submission of offers
 - b. Prior to the REALTOR® submitting an offer to purchase the property.
 - c. At least 10 days prior to closing
 - d. In writing by certified mail
10. Article 10 of the REALTOR® Code of Ethics includes how many protected classes?
 - a. 6
 - b. 7
 - c. 8
 - d. 9
11. True or false? When REALTORS® prepare opinions of real property value or price they must be knowledgeable about the type of property being valued.
 - a. True
 - b. False

Review Question Answers:
1. a 2. b 3. d 4. a 5. c 6. d
7. a 8. b 9. b 10. d 11. a

MODULE 5

Enforcement and Resolution Processes

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®. Boards and Associations of REALTORS® are responsible for enforcing the REALTOR® Code of Ethics. From their membership they form Grievance and Professional Standards Committees as well as other dispute resolution processes to handle complaints.

The members of the Grievance Committee and the Professional Standards Committee are appointed by the President of the Board or Association of REALTORS® subject to confirmation of the Board of Directors.

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 your firm or theirs. Open, constructive discussion often resolves questions or differences, eliminating the need for further action. But, if all else fails, then maybe you will file a formal complaint. Always check with your principal broker for guidance in this area.

In addition to processing formal ethics complaints against its REALTOR® members, many boards and associations offer informal dispute resolving processes (e.g., ombudsman, mediation, etc.). Often parties are more satisfied with informal dispute resolution processes since they are quicker, less costly, and often help repair damaged relationships.

The vocabulary used in the ethics and arbitration process is:

Complainant: the party who makes the complaint (aka the plaintiff)

Respondent: the party who is accused

Prevailing Party: the party who “wins”

Non-prevailing Party: the party who “loses”

Before we look at the processes, we need to differentiate between *Ethics* and *Arbitration*. Ethics cases are about possible violations of the Code of Ethics. Arbitration is about a money dispute such as which agent is entitled to any or all of the commission. Arbitration is not about wrongdoing; it's just about the money. So let's look at these areas one at a time.

The Ethics Enforcement Process

- Who can file a complaint? Anyone! All REALTORS® as well as the public. (Note: Usually not within the same company since it is expected that companies will have their own internal dispute resolution process.) The complaint must cite which Articles or

Articles of the Code of Ethics have been violated, and various Standards of Practice can be included to further amplify the cited Article.

- As of January 1, 2106, Ombudsman Services must be offered 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. Ombudsman procedures are intended to provide enhanced communications and initial problem-solving capacity at the local level. The ombudsman’s role is primarily one of communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred or who is entitled to what amount of money, rather they anticipate, identify, and resolve misunderstandings and disagreements before matters ripen into disputes and possible charges of unethical conduct.”
- The complaint, if not handled or resolved by an ombudsman, is sent to the Grievance Committee. This is a screening committee comprised of members of the Association appointed to the committee. The 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?” The Grievance Committee does not rule on the alleged violation. It either rejects it or sends it forward to a Professional Hearing Panel.
- The Professional Standards Hearing Panel’s function is to conduct a full “due process” hearing with sworn testimony, witnesses and evidence. The Hearing Panel is comprised of members of the Professional Standards Committee. The entire hearing is recorded so that there will be a record of the hearing on file in case there is a later question or concern about the topic of “due process.” After conducting a hearing, the Hearing Panel goes into a closed session, prepares a findings of fact, and decides by a simple majority vote 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). Before deciding on which level of discipline to impose, the Hearing Panel has the right to inquire if the party has additional violations in their permanent file. Obviously a repeat offender will have a stiffer penalty! Following is the list of possible disciplines.

The Ethics Enforcement Process

Authorized Discipline (and administrative processing fees)

1. Letter of Warning
2. Letter of Reprimand
3. Education

4. Fine not to exceed \$15,000 (*amended 1/1/14 from \$5,000 to \$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. Administrative processing fee (if found in violation) not to exceed \$500 (“Court Costs”)

Note that the real purpose of discipline is to educate the respondent and to vindicate the Code of Ethics. Note, too, that there are never money “damages” awarded in an ethics hearing.

review questions...

The following questions will NOT be graded. They are asked to help you judge your comprehension of the course material.

1. Who is responsible for enforcing the REALTOR® Code of Ethics?

- a. The Grievance Committee at local Boards
- b. The Arbitration Committee
- c. The Board of Grievance at the state association
- d. Boards and Associations of REALTORS®

2. The Code of Ethics of NAR imposes duties to

- a. Real estate professionals who choose to become REALTORS®
- b. Only real estate salespeople and brokers who join NAR
- c. All real estate licensees
- d. All members of the NDRC

3. Who appoints members of the Grievance Committee?

- a. The Executive Officer at the Board or Association of REALTORS®
- b. The REALTOR® membership at large
- c. The President of the Board or Association of REALTORS®
- d. The Professional Standards Committee

4. The Grievance Committee is comprised of members of the

- a. REALTOR® board or association
- b. REALTOR® board and members of the community
- c. Professional Grievance Association
- d. Local board, the local Chamber of Commerce and the local community

5. The Professional Standards Committee is appointed by

- a. The Executive Officer at the Board or Association of REALTORS®
- b. The REALTOR® membership at large
- c. The President of the Board or Association of REALTORS®
- d. The Grievance Committee

6. When members are selected to serve on the Professional Standards Committee, final approval and confirmation is made by which of the following?

- a. The Executive Officer at the Board or Association of REALTORS®
- b. The REALTOR® membership at large
- c. The Board of Directors of the Board or Association of REALTORS®
- d. The Grievance Committee

7. Dispute resolution processes are which of the following?

- a. Quicker
- b. Less costly
- c. More informal
- d. All of the above

8. The party who makes the complaint is called the _____:

- a. Complainant
- b. Respondent
- c. Prevailing party
- d. Protestor

9. In an ethics or arbitration hearing the accused party is called the _____:

- a. Complainant
- b. Perpetrator
- c. Respondent
- d. Non-prevailing party

10. The party who “wins” in an ethics or arbitration hearing is called the _____:

- a. Complainant
- b. Winner
- c. Prevailing party
- d. Non-prevailing party

11. The party who “loses” in an ethics or arbitration hearing is called the _____:

- a. Complainant
- b. Loser
- c. Prevailing party
- d. Non-prevailing party

12. True or false? Arbitration is not about wrongdoing.

- a) True
- b) False

Review Question Answers:
1. d 2. a 3. c 4. a 5. c 6. c
7. d 8. a 9. c 10. c 11. d 12. a

MODULE 5 continued

Enforcement and Resolution Processes

The Arbitration Enforcement Process

Who can file a complaint? ONLY Principal Brokers who are REALTOR® members may file a complaint against another Principal Broker REALTOR® from a different firm. (Salespeople cannot file a complaint because technically they are not paid commissions. Only the Principal Broker is paid the commission and then splits some of it with the salespeople. However, the broker may permit the salesperson to also be present at the hearing.) Sometimes there are complaints filed against Principal Brokers in more than one firm, and sometimes the complaint is filed against the Principal Broker *and* the firm. But to simplify the process, mediation is a nice solution.

Note the 1/1/16 Ombudsman Services may be utilized to handle initial concerns or monetary disputes if the local board or association includes this service for arbitral matters.

The NAR requires that Mediation services **must be offered** to the parties in an arbitration case. Mediation is a voluntary process in which disputing parties meet with a mediator appointed by the board or association to create a mutually acceptable resolution of the dispute, rather than having a decision imposed by an Arbitration Hearing Panel. Some boards and associations have even made by-law changes to make mediation **mandatory** before submitting the case to a formal hearing panel. Mediation can occur before or after the Grievance Committee reviews requests for arbitration, depending on local board or association policy. 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 the mediation process does not reach resolution, the complaint can be sent to the Grievance Committee. Similar to the way they review ethics complaints, the Grievance Committee performs a screening function. The key question for the Grievance Committee is this: "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 arbitral, i.e. is there some basis on which an award could be based? If the Grievance Committee sends it forward, the next step is a hearing.

The Professional Standards Hearing Panel's function is to conduct a full "due process" hearing with sworn testimony, counsel, witnesses and documentary evidence. The entire hearing is recorded so that there will be a record of the hearing on file in case there is a later question or concern about the topic of "due process." 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.

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. Some associations have rules requiring that monetary awards be deposited with the association pending review of the hearing process or during legal challenge.

review questions...

The following questions will NOT be graded. They are asked to help you judge your comprehension of the course material.

- 1. True or false? Ethics complaints generally are not heard at the local board or association if the parties are from the same firm.**
 - a. True
 - b. False
- 2. True or false? As of January 1, 2016 Ombudsman Services must be offered to members, clients, and consumers.**
 - a. True
 - b. False
- 3. Ombudsman Services _____:**
 - a. Are at the discretion of the local board or association of REALTORS®
 - b. Have been mandatory since January 1, 2016
 - c. Are available to only REALTOR® members
 - d. Must be purchased from the American Bar Association
- 4. The screening committee who looks at complaints is called the _____:**
 - a. NAR Screening Committee
 - b. Professional Standards Committee
 - c. Professional Screening Committee
 - d. Grievance Committee
- 5. True or false? The Ethics Hearing Panel is comprised of members of the Professional Standards Committee.**
 - a. True
 - b. False
- 6. After an ethics hearing is complete, the hearing panel does which of the following?**
 - a. Goes into a closed session
 - b. Prepares a findings of fact
 - c. Votes on who is the prevailing party
 - d. All of the above

Questions continued on the next page

MODULE 6

Concepts of Procuring Cause in Arbitration

"Who deserves the commission?" is the key reason that brokers arbitrate. How often have you heard an agent say, "Hey, that's MY buyer!" or "Well, I showed him the house first!" or "Well, he's my exclusive buyer client, and I can't help it if he's running around with other agents!" Or how about this: A cooperating broker gives you an offer-to-purchase on your listing that you showed yesterday to this same buyer! Sometimes an agent tries to freeze out another agent, and sometimes it's the Buyer who freezes out his own agent for varying reasons. And other times there is confusion or ignorance on the part of one or more of the parties. All of these situations pose a problem.

Truth is, though, that there is no "predetermined rule of entitlement." Facts such as the first showing of the property, the writing of the successful offer, or the existence of an agency contract with the buyer are not, in themselves, exclusive determiners of procuring cause/entitlement. Procuring cause is a very complicated issue, and there are no "precedents" since every single case is different. Hearing panels have no easy task. The NAR Code of Ethics and Arbitration Manual publishes "Factors for Consideration by Arbitration Hearing Panels" which covers ten pages (pages 159 through 168) of questions and factors to consider.

But when all the factors are considered, hopefully the Hearing Panel will reach a fair, equitable, and reasoned decision in every case. Note there is no "splitting the fees" as the end result of an arbitration hearing. There is only one prevailing party who is determined to be the procuring cause. Thus agents who are looking for a mutual agreement to "work it out" by splitting fees need to do that on their own or in mediation, not in arbitration. Also, there is no appeal to an arbitration decision unless it has to do with the alleged lack of "due process." Be sure you're willing to walk away with no commission before you agree to a procuring cause arbitration hearing!

As mentioned above, procuring cause is a very complicated area. On a lighter note to end this section, it has been said that an Arkansas judge once remarked, "It's not the squirrel that gathers the nuts, but the one who shakes the tree who is entitled to be paid."

7. Before deciding on authorized discipline, the Ethics Hearing Panel does which of the following?

- a. Determines if the non-prevailing party has had previous offenses
- b. Takes a 24 hour recess to discuss its options
- c. Builds an additional cases for monetary damages
- d. Queries the membership to find out if other members have had issues with this person.

8. Which of these is not an authorized discipline in an Ethics case?

- a. Monetary damages
- b. Letter of reprimand
- c. Education
- d. Probation for up to one year

9. If a non-prevailing party in an Ethics Hearing has had recent, prior offenses then _____.

- a. The Hearing Panel refers the discipline to the Board of Directors
- b. The Board of Directors must evaluate the possibility of expulsion from membership
- c. The Hearing Panel will assess stiffer penalties
- d. The President of the Board of Directors helps decide on the discipline

10. True or false? The real purpose of authorized discipline in an Ethics Hearing is to educate the respondent and to vindicate the Code of Ethics.

- a. True
- b. False

Review Question Answers:

1. a 2. a 3. b 4. d 5. a
6. d 7. a 8. a 9. c 10. a

review questions...

The following questions will NOT be graded. They are asked to help you judge your comprehension of the course material.

- True or false? The NAR requires mandatory mediation before any arbitration hearing may be held.**
 - True
 - False
- In an Arbitration complaint, if the parties agree to mediate but then cannot reach a resolution, _____.**
 - The case is deemed void
 - The parties must default to splitting the commission equally
 - The parties may choose to arbitrate
 - The decision is rendered by a majority vote of the Board of Directors
- The Professional Standards Hearing Panel's function is to conduct a full "due process" hearing with which of the following?**
 - Sworn testimony
 - Documentary evidence
 - Witnesses
 - All of the Above
- When two or more brokers each believe the sales commission should go them, which kind of case ensues at the board?**
 - Civil
 - Ethical
 - Criminal
 - Procuring cause
- True or false? Procuring cause is a very complicated issue, and there are no "precedents" since every single case is different**
 - True
 - False
- Agents who believe they were the procuring cause of a closed sale should do which of the following?**
 - File a complaint
 - Request mediation at the local board
 - Contact their attorney
 - Consult with their principal broker
- True or false? In Procuring Cause Arbitration Hearings there are no appeals except in regard to due process.**
 - True
 - False

- In an arbitration hearing the party who is not successful in being awarded the money is the _____.**
 - Non-prevailing party
 - Loser
 - Perpetrator
 - Unsub

- If you're willing to take the risk and walk away with no commission, then _____.**
 - Mediate
 - Intimidate
 - Infiltrate
 - Arbitrate

Review Question Answers: 1. b, 2. c, 3. d, 4. d, 5. a, 6. d, 7. a, 8. a, 9. d

MODULE 7

Pathways to Professionalism

"While the Code of Ethics and Standards of Practice of the National Association of REALTORS® 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."

Note that these professional courtesies are intended to be used by REALTORS® on a voluntary basis, and they cannot form the basis for a professional standards complaint.

Take a look at this list, and think about which items jump out at you as problematic issues that you face in your day-to-day real estate activities. This is actually a great exercise to perform at a sales meeting or board function to not only help highlight the areas of angst that so many agents face, but to take corrective steps to eliminate them.

I. Respect for the Public

- Follow the "Golden Rule": Do unto other as you would have them do unto you.
- Respond promptly to inquiries and requests for information.
- Schedule appointments and showings as far in advance as possible.

- Call if you are delayed or must cancel an appointment or showing.
- If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
- Communicate with all parties in a timely fashion.
- When entering a property 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 occupant.
- Inform occupants that you are leaving after showings.
- 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.
- Present a professional appearance at all times; dress appropriately and drive a clean car.
- If occupants are home during showings, ask their permission before using the telephone or bathroom.
- Encourage the clients of other brokers to direct questions to their agent or representative.
- Communicate clearly; don't use jargon or slang that may not be readily understood.
- Be aware of and respect cultural differences.
- Show courtesy and respect to everyone.
- Be aware of—and meet—all deadlines.
- Promise only what you can deliver—and keep your promises.
- Identify your REALTOR® and your professional status in contacts with the public.
- Do not tell people what you think—tell them what you know.

II. Respect for Property

- Be responsible for everyone you allow to enter listed property.
- Never allow buyers to enter listed property unaccompanied.
- When showing property, keep all members of the group together.
- Never allow unaccompanied access to property without permission.

- Enter property only with permission even if you have a lockbox key or combination.
- 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.
- 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.
- Use sidewalks; if weather is bad, take off shoes and boots inside property.
- Respect sellers' instructions about photographing or video graphing their properties' interiors or exteriors.

III. Respect for Peers

- Identify your REALTOR® and professional status in all contacts with other REALTORS®.
- Respond to other agents' calls, faxes, and e-mails promptly and courteously.
- Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
- 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.
- Avoid the inappropriate use of endearments or other denigrating language.
- Do not prospect at other REALTORS®' open houses or similar events.
- Return keys promptly.
- Carefully replace keys in the lockbox after showings.
- To be successful in the business, mutual respect is essential.
- Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come.

NAR also provides a short video about The Pathways to Professionalism at www.realtor.org/videos/video-a-pathway-to-professional-conduct

review questions...

The following questions will NOT be graded. They are asked to help you judge your comprehension of the course material.

- 1. True or false? Knocking and announcing yourself loudly before entering any closed room demonstrates Respect for the Public.**
 - a. True
 - b. False
- 2. Which of these statement applies to the Respect to Peers section in the Pathways to Professionalism?**
 - a. Notify the listing broker if there seems to be inaccurate information on a listing
 - b. Follow MLS deadlines for inputting new listings
 - c. Remove your shoes in homes that have white carpeting
 - d. Share your lockbox e-key with agents who don't have one
- 3. The NAR list of recommended, professional courtesies is called _____:**
 - a. Pathways for REALTOR® Practices
 - b. Pathways for REALTORS®
 - c. Pathways to Professionalism
 - d. Pathways to Positive Practice
- 4. The 3 sections in the Pathways for Professionalism are _____:**
 - a. Public, Property and Peers
 - b. People, Property and Peace
 - c. People, Perceptions and the Public
 - d. Public, Principles and Peers
- 5. The Pathways to Professionalism includes which of the following?**
 - a. Respect for Self
 - b. Respect for Country
 - c. Respect for Property
 - d. Respect for Federal Regulations
- 6. True or false? The REALTOR® Code of Ethics is our promise of performance and professionalism**
 - a. True
 - b. False
- 7. Which of the following is not one of the six timeless tips presented in "A Pathway to Professional Conduct"?**
 - a. Golden Rule
 - b. Curtesy and Respect
 - c. Communication
 - d. Promotion
- 8. Not allowing use of the bathing facilities shows:**
 - a. Respect for the public
 - b. Respect for the property
 - c. Respect for the Buyer
 - d. None of the above
- 9. Saying what you know and not what you think demonstrates:**
 - a. Respect for the public
 - b. Respect for the property
 - c. Respect for peers
 - d. Respect for people
- 10. What does "A Pathway to Professional Conduct" suggest about making promises?**
 - a. Don't make them
 - b. Promises are not important
 - c. Keep them and make sure they are realistic
 - d. Make promises you don't have the authority to make
- 11. Communicating clearly and not using jargon demonstrates:**
 - a. Respect for the public
 - b. Respect for the property
 - c. Respect for peers
 - d. Respect for people
- 12. The following are examples of important information to share with other professionals except:**
 - a. There are pets in the home
 - b. The owners will be present in the home
 - c. There is a security system
 - d. There are two blue couches in the home

Review Question Answers:
1. a 2. a 3. c 4. a 5. c 6. a
7. d 8. b 9. a 10. c 11. a 12. d

MODULE 8

Self-Evaluation / Action Steps

The National Association of REALTORS® Code of Ethics training reminds us that the REALTOR® Code of Ethics:

- Protects the buying and selling public and the general public
- Promotes a competitive real estate market place
- Enhances the integrity of our profession
- Is our promise of performance
- Is our promise of professionalism

If you are a REALTOR® member, hopefully this course has updated you on the latest COE information so that you can be better equipped to comply with the responsibilities and obligations that your membership requires. But if you're not a REALTOR® member, this course may have shed some light on the importance of ethical guidelines and processes that help to professionalize the real estate industry at large.

Believing in and demonstrating strong, ethical behaviors in the real estate business is your choice and your challenge, so good luck!

ADDITIONAL RESOURCES:

- **NAR Code of Ethics**
www.realtor.org/governance/governing-documents/the-code-of-ethics
- **NAR Code of Ethics and Arbitration Manual**
www.realtor.org/code-of-ethics-and-arbitration-manual
- **NAR Pathways to Professionalism**
www.realtor.org/code-of-ethics/pathways-to-professionalism
- **NAR YouTube Channel**
www.youtube.com/user/NAREALTORS/about