CHAPTER 1: WHAT IS ETHICS?

Chapter Overview

The first chapter in our Code of Ethics course will examine what exactly the term "ethics" means and how it relates to values and principles, standards, regulations and laws. Chapter One will also include information about the history of the National Association of REALTORS® (NAR) Ethics Code and the structure of the Code as it exists today. We'll also review the Preamble and the Golden Rule along with Articles 1-9, Duties to Clients and Customers, and review some case studies and examples related to those Articles.

Learning Objectives

Upon completion of this chapter, the student will be able to:

- Define “ethics” and differentiate among “principles” and “values”
- Review the structure of the Code and be able to discuss the Preamble and the Golden Rule
- Describe key concepts of Articles 1-9 of the NAR Code of Ethics

What is Ethics?

Before we get into the bulk of this course, it is first necessary to understand what the term "ethics" actually implies. Many associate the term with "principle" or "value;" however, there are important differences among the three.

Merriam Webster defines the terms as the following:

**Principle:** a comprehensive and fundamental law, doctrine, or assumption

**Value:** something (as a principle or quality) intrinsically valuable or desirable

**Ethic:** dealing with what is good and bad and with moral duty and obligation

In other words, *principles* are intellectual and immutable, values are emotional and can change, and ethics are behaviors and actions. See the difference?

**Business ethics** is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct and is relevant to the conduct of individuals and entire organizations.

The next issue we need to examine is where ethics stand in regard to standards, regulations, and laws. Let’s take a quick glance at the definitions of each.

**Laws:** legal documents setting forth rules governing a particular kind of activity

**Regulations:** the principles or conditions that customarily govern; authoritative rules

**Standards:** the ideal in terms of which something can be judged; a basis for comparison; a reference point against which other things can be evaluated

**Ethics:** the principles of right and wrong that are accepted by an individual or social group; a system of principles governing morality and acceptable conduct

As you can see, the order in which these terms are presented corresponds to the continuum of concrete to abstract thought. Defining ethics is clearly more complex than defining laws, therefore, we can deduce that adhering to ethical conduct is more complex than adhering to laws. After all, can everyone agree on what is right and what is wrong? Absolutely not! However, everyone can agree on whether a law has been broken or not – the lines separating legal and illegal behavior are very bold.

The final distinction to be made on this topic is between business and personal ethics. Though the ethical framework exercised in private decisions certainly influences professional behavior, there is again a clear difference which needs some review.

Personal ethics reflect general expectations of any person in any society, while business ethics reflect required behavior within the context of a professional practice. The following are sample criteria for each set:

**Personal ethics**

- Concern for the well-being of others
- Respect for the autonomy of others
- Trustworthiness and honesty
- Willing compliance with the law
- Being fair
- Refusing to take unfair advantage
- Doing good
- Preventing harm
**Business ethics**

- Impartiality and objectivity
- Openness and full disclosure
- Confidentiality
- Due diligence and duty of care
- Fidelity to professional responsibilities
- Avoiding potential or apparent conflict of interest

**The National Association of REALTORS®**

Most professions have internally enforced codes of practice or codes of ethics that members of the profession must follow to prevent exploitation of the client and to preserve the integrity of the profession. This is not only for the benefit of the client but also for the benefit of those belonging to the profession. Disciplinary codes allow the profession to define a standard of conduct and ensure that individual practitioners meet this standard by disciplining them from the professional body if they do not practice accordingly. This allows those professionals who act with conscience to practice in the knowledge that they will not be undermined commercially by those who have fewer ethical qualms. It also maintains the public's trust in the profession, encouraging the public to continue seeking their services.

In most states, real estate professionals are governed by a hierarchy of codes and regulations. The most general are state and federal codes, both criminal and civil, which apply to the general population. Next, there are a number of voluntary professional organizations which regulate real estate activity by their membership, who have, as we discussed above, internally enforced codes of ethics.

However, this has not always been the case. Prior to 1900, there was no licensing of real estate practitioners and speculation and exploitation was rampant in the industry. Caveat emptor (buyer beware) governed transactions and real estate was a tough game to play!

The National Association of REALTORS®, commonly referred to as NAR, was founded in 1908 in Chicago, Illinois. Under the name of The National Association of Real Estate Exchanges, the 120 founding members’ objective was “to unite the real estate men of America for the purpose of effectively exerting a combined influence upon matters affecting real estate interests.”

Before changing the group's name to The National Association of Real Estate Boards in 1916, the Code of Ethics was adopted in 1913 with the Golden Rule at its foundation to establish professional standards of conduct for the business. In 1949, REALTOR® was approved by the Patent and Trademark Office.

The formal name of the organization was changed one final time in 1974 to its current title and has since become a substantial trade association with over 850,000 members, 54 State Associations and more than 1,500 local Associations.

The Code of Ethics and Standards of Practice of the National Association of REALTORS® (Code of Ethics) is the cornerstone of the National Association of REALTORS® ethics training. It guides Realtors® and also shows the public the level of commitment, education, and dedication to their profession that each member of NAR possesses. The NAR Code of Ethics lies at the heart of being a Realtor®. Since its adoption in 1913, the Code has promoted time-honored principles that are generally defined as:

- Loyalty to clients
- Fiduciary duty to clients
- Cooperation with competitors

Truthfulness in statements and advertising and non-interference in exclusive relationships that other Realtors® have with their clients

Realtor® (or Realtor-Associate®) members who violate the Code of Ethics can be subject to sanctions by their local Association through procedures established by NAR.

**Origins of the Code of Ethics**

The National Association of REALTORS® was originally founded as the National Association of Real Estate Exchange in Chicago on May 12, 1908. The video to the right provides an overview of the Code of Ethics origin. The video covers material that you will be quizzed on later.

http://www.youtube.com/embed/OKWPptTl-4M

**Structure of the Code**

The Code of Ethics provides a comprehensive view of unethical situations and is structured according to three sections with articles and standards of practice. The articles are general statements supported by standards which outline specific behaviors. Overall, the NAR Code of Ethics:

- Protects the buying and selling public
- Promotes a competitive real estate marketplace
- Enhances the integrity of the industry
The first section of the Code of Ethics is the preamble, followed by three major sections:

- Duties to clients and customers
- Duties to the Public
- Duties to Realtors®

The Code’s 17 Articles are broad statements of ethical principles while the Standards of Practice support, interpret, and amplify the Articles under which they are included.

It’s important to note that only violations of the Articles themselves can result in disciplinary action. Realtors® may not be found in violation of a Standard of Practice, only its foundational Article. Standards of Practice may however be cited in support of an alleged violation of an Article.

Click [here](#) for a printable poster to hang in your office or provide quick reference.

**The Preamble**

The Preamble to the Code of Ethics is its inspirational foundation because its principles are ideals toward which Realtors® should strive:

- Honesty
- Integrity
- Fairness
- Moral conduct in business relations

The Preamble is aspirational in nature; it cites the ideals by which Realtors should aspire to conduct their business. It describes subjective ideas rather than measurable standards.

The Preamble begins with the inspiring words of "Under all is the land..." These words represent the all-encompassing nature of the field, as land is the foundation of many aspects of society. As one of society's most important commodities, the foundation of land accounts for simple necessities such as food and shelter, as well as more complex aspects such as economy and prosperity. Overall, the profession of real estate is very important from the ground up, literally!

The Preamble sets forth aspirational concepts from which the Code of Ethics has been formed. The Preamble cannot be cited as the basis for disciplinary action, as it is “aspirational” and describes subjective ideals, not measurable standards. The Code itself provides the measurable standards by which disciplinary action can be taken.

**The Golden Rule**

When reading the full text of the NAR Code of Ethics, one can readily determine that the Golden Rule is a core element of its foundation. As stated in the final paragraph of the Preamble, the entire code refers to the simple premise of "whatsoever ye would that men should do to you, do ye even so to them."1 In other words, treat others like you would like to be treated.

Now let's take a look at each of Articles 1-9, "Duties to Clients and Customers." Where applicable, text taken in its entirety from the NAR Code of Ethics document will be italicized.

1 Matthew 5:37, King James Version of the Bible, 1611

**Article 1**

Article 1 discusses Realtors®’s fiduciary duties to their client. To "protect and promote" the client’s interest is to focus on what’s best for the client you represent while being honest with all parties.

**Article 1**

*When representing a buyer, seller, landlord, tenant, or other client as an agent, Realtors® pledge themselves to protect and promote the interests of their 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 clearly states that a Realtor® must protect and promote the interests of the client, and that this obligation is primary. However, in all cases and at all times, Realtors® also have a duty to treat all parties honestly. This includes parties who are not represented by the Realtor®.

The Standards of Practice included in this Article further amplify the Standards by which Realtors must abide. We’ll list all of them below and review some of them in detail.

- **Standard of Practice 1-1**
  *Realtors®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)*

*Know the Code: Your Guide to the Code of Ethics*
Let's continue on with the list of Standards of Practice for Article 1.

**Standard of Practice 1-2**

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether Realtors® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on Realtors® acting in non-agency capacities.

As used in this Code of Ethics, “client” means the person(s) or entity(ies) with whom a Realtor® or a Realtor®’s firm has an agency or legally recognized non-agency relationship; “customer” means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the Realtor® or the Realtor®’s firm; “prospect” means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the Realtor® or Realtor®’s firm; “agent” means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and “broker” means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

**Standard of Practice 1-3**

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

Why do you think an agent would ever want to mislead an owner as to the market value of their property? Do you think that in an effort to obtain a listing, agents may recommend a list price higher than what they really feel the market will support, because they know that is what the seller wants to hear and the agent wants to obtain the listing? Do you think it’s possible that a licensee could recommend a price lower than what he or she felt was true market value in an attempt to sell a property quickly and perhaps even to one of that agent’s own clients? In any of these cases, this would have been a clear violation of Article 1.

Let’s continue on with the list of Standards of Practice for Article 1.

**Standard of Practice 1-4**

Realtors®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the Realtor®’s services. (Amended 1/93)

**Standard of Practice 1-5**

Realtors® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. (Adopted 1/93)

**Standard of Practice 1-6**

Realtors® shall submit offers and counter-offers objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)

Let’s look at Standard of Practice 1-6 in a little more detail.

As we all know, situations can arise which legitimately prevent an offer from being presented immediately (seller is out of town with no access to email, etc.), but have you ever been in a situation where your offer was not presented in a timely manner for no valid reason? And then you discovered that the seller had accepted another offer, written by the listing agent? If the listing agent was, in fact, found to be in violation of Article 1 by failing to present offers objectively and as quickly as possible, she could face disciplinary action. We will discuss what can be involved in disciplinary action later in this course.

Continuing on with the Standards of Practice:

**Standard of Practice 1-7**

When acting as listing brokers, Realtors® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Realtors® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. Realtors® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/93)

**Standard of Practice 1-8**

Realtors®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Realtors®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/99)

**Standard of Practice 1-9**

The obligation of Realtors® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. Realtors® shall not knowingly, during or following the termination of professional relationships with their clients:

1. reveal confidential information of clients; or
2. use confidential information of clients to the disadvantage of clients; or
3. use confidential information of clients for the Realtor®’s advantage or the advantage of third parties unless:
   a. clients consent after full disclosure; or
   b. Realtors® are required by court order; or
   c. it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or

Know the Code: Your Guide to the Code of Ethics
d. it is necessary to defend a Realtor® or the Realtor®’s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)

- **Standard of Practice 1-10**
  Realtors® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. (Adopted 1/95, Amended 1/00)

- **Standard of Practice 1-11**
  Realtors® who are employed to maintain or manage a client’s property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. (Adopted 1/95)

- **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)

- **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)

**Article 1 (cont.)**

- **Standard of Practice 1-14**
  Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. (Adopted 1/02)

- **Standard of Practice 1-15**
  Realtors®, in response to inquiries from buyers or cooperating brokers shall, with the sellers’ approval, disclose the existence of offers on the property. Where disclosure is authorized, Realtors® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/09)

- **Standard of Practice 1-16**
  Realtors® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. (Adopted 1/12)

We won’t go into these in any detail, just remember you’re responsible for understanding them and following them.

Let’s examine a case study related to Article 1 taken from the NAR website.

**Case Study**

**Case #1-15: Obligation to Advise Client on Market Value**

(Originally Case #2-1. Revised and transferred to Article 7 as Case #7-19 May, 1988. Transferred to Article 1 November, 1994.)

Client A went from his hotel to REALTOR® B’s office and advised that he formerly lived in the community, and had kept his home as an income property after he moved away. The house had been vacant for several months and he had decided to sell it. He asked if REALTOR® B could drive him to look at it. As they inspected it, Client A stated that he would be happy to get $80,000 for it. REALTOR® B listed it at that price and after a few days it was sold to Buyer C.

Six months later, Client A was in town again. Hoping to recover a box of old photographs he had left in the attic, he called on Buyer C, whom he had met at settlement. When he arrived he found that Buyer D then lived in the house. He expressed some surprise that Buyer C had sold it so soon, and learned that Buyer D paid $140,000 for it. Astonished, Client A then made some inquiries as to market values and learned that he had grossly under-priced his house when listing it with REALTOR® B. He went to the Board of REALTORS® office and filed a complaint against REALTOR® B charging him with unethical conduct in not having advised him as to the property’s fair market value.

At the hearing, REALTOR® B’s defense was that he had not been asked to put a price on the house, but had accepted agency on the basis of a price set by the client; that the client had stated he “would be happy” to get $80,000 for it; that he was glad to get a listing that would move quickly in the market;
that he had done nothing unethical since he had not bought it himself; and that while he had honestly pointed out to the buyer that the house was a
bargain, he had made no effort to induce relatives or business associates to buy it.

On questioning, he conceded that after looking at the house with Client A, he realized the property was being listed at about half its fair market value, but insisted that was his client’s business; that different owners have different reasons for selling and pricing their property, but acknowledged that Client A had not indicated that he needed a quick sale or that he would make any price concession.

The Hearing Panel pointed out that brokers have no hesitation in advising clients that properties are overpriced when this is the case, and they are obligated to be equally candid in providing their best judgment to clients when properties being offered for sale are obviously underpriced.

The panel concluded that in view of the wide discrepancy between the owner’s asking price and the property’s market value, which REALTOR® B conceded was apparent to him, it was REALTOR® B’s obligation as an agent to advise his client that the house was worth considerably more, especially since it was apparent that Client A had been away from the community for years and was out of touch with local values. The Hearing Panel found REALTOR® B in violation of Article 1.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 2

Articles 2 – 9 continue with “Duties to Clients and Customers.” As before, we will review a few of the Standards of Practice included in these Articles in detail. Remember though, as a Realtor®, it is your responsibility to be familiar with and abide by all of them. Article 2 deals with disclosure of pertinent or material facts. Property condition disclosures are vital. Make sure property defects and adverse factors are disclosed to the buyer or tenant.

Article 2

Realtors® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. Realtors® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (Amended 1/00)

- **Standard of Practice 2-1**
  Realtors® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the Realtor® the obligation of expertise in other professional or technical disciplines. (Amended 1/96)

- **Standard of Practice 2-2**
  (Renumbered as Standard of Practice 1-12 1/98)

- **Standard of Practice 2-3**
  (Renumbered as Standard of Practice 1-13 1/98)

- **Standard of Practice 2-4**
  Realtors® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**
  Factors defined as “non-material” by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2. (Adopted 1/93)

Article 2 is all about disclosure. Clearly, Realtors® must disclose “pertinent facts” relating to the property or the transaction. According to Article 2, however, a Realtor® is NOT obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose confidential information. A very important issue to remember is to not advise on matters outside the scope of your real estate license!

Perhaps you are showing a property and both you and your buyers notice some cracks in one of the interior walls. As this could be a significant issue, you discuss the cracks with the client. It could be very simple for you to say something as seemingly innocent as “settlement cracks are common in homes this age.” But that little seemingly insignificant phrase could result in some huge ramifications. Unless you are a structural engineer, you should NOT be offering your opinion on cracks in the walls. There are many case histories where agents have been found liable because their clients “believed” that they were experts in something outside of the scope of their real estate license. Don’t do it.

**Case Study**

**Case #2-7: Obligation to Determine Pertinent Facts**

(Revised Case #9-13 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a home builder, showed one of his newly constructed houses to Buyer B. In discussion, the buyer observed that some kind of construction was beginning nearby. He asked REALTOR® A what it was. “I really don’t know,” said REALTOR® A, “but I believe it’s the attractive new shopping center that has been planned for this area.” Following the purchase, Buyer B learned that the new construction was to be a bottling plant and that the adjacent area was zoned industrial.

Charging that the proximity of the bottling plant would have caused him to reject purchase of the home, Buyer B filed a complaint with the Board of REALTORS® charging REALTOR® A with unethical conduct for failing to disclose a pertinent fact. The Grievance Committee referred the complaint for a hearing before a Hearing Panel of the Professional Standards Committee.
Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 3

Article 3 deals with cooperation with other brokers. It’s important to note that “cooperation” is not about being polite and is not a synonym for “compensation.” Cooperation is defined as sharing information about listings and making listings available for showings.

**Standard of Practice 3-1**
Realtors®, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. (Amended 1/95)

**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)

**Standard of Practice 3-3**
Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. (Adopted 1/94)

**Standard of Practice 3-4**
Realtors®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker’s firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. (Amended 1/02)

**Standard of Practice 3-5**
It is the obligation of subagents to promptly disclose all pertinent facts to the principal’s agent prior to as well as after a purchase or lease agreement is executed. (Amended 1/93)

**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)

**Standard of Practice 3-7**
When seeking information from another Realtor® concerning property under a management or listing agreement, Realtors® shall disclose their Realtor® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. (Amended 1/11)

**Standard of Practice 3-8**
Realtors® shall not misrepresent the availability of access to show or inspect a listed property. (Amended 11/87)

**Standard of Practice 3-9**
Realtors® shall not provide access to listed property on terms other than those established by the owner or the listing broker. (Adopted 1/10)

**Standard of Practice 3-10**
The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. (Adopted 1/11)

Article 3 sets the standards of cooperation in the real estate industry. The real estate business is one of the few professions that require that you cooperate with your own competition! This cooperation is, however, the foundation for the Multiple Listing Service (MLS), and benefits the consumer as well as the licensee.

One thing to be aware of is that “cooperation” does not mean “compensation.” As stated above, in Standard of Practice 3-1, “Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation.” Offers of compensation are typically made by and to members within a local MLS. This means that if you are not a member of that MLS, there is no guarantee of compensation from the listing broker.
Article 3 Case Study

Case #3-4: Cooperation Not Mandatory

(Reaffirmed Case #22-4 May, 1988. Transferred to Article 3 November, 1994.)

Client A called on REALTOR® B to list a small commercial property. In stipulating the price at which he wished to list the property, Client A explained that he was aware that it was a relatively low price, but he wanted a quick sale and, he added, a higher price could benefit very little at that time because of certain tax considerations. He told REALTOR® B that a number of prospective buyers had spoken to him about the property within the past year. He gave their names to REALTOR® B and said he felt sure that among them there would be a ready buyer at the price. He told REALTOR® B that he wanted the property submitted to them first.

The next day, REALTOR® C, who had unsuccessfully solicited the listing and learned that the property was listed exclusively with REALTOR® B, called REALTOR® B to ask that he be accepted as a cooperating broker.

REALTOR® B told REALTOR® C that because of unusual circumstances the best service to his client did not require cooperation; that a prospective buyer was at that time seriously considering the property; and that under the circumstances he preferred not to invite cooperation.

REALTOR® C complained to the Board of REALTORS® charging REALTOR® B with a violation of Article 3 by refusing to cooperate. Pursuant to the complaint a hearing was scheduled before a Hearing Panel of the Board’s Professional Standards Committee.

During the hearing, REALTOR® B outlined fully the circumstances under which the property had been listed by him, and maintained that the interest of Client A would not be advanced by acceptance of cooperation by REALTOR® C.

The panel concluded that REALTOR® B’s reasons for not accepting cooperation in this instance were valid and that his action did not constitute a violation of Article 3.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 4

Article 4 is fairly self-explanatory. Realtors® are required to disclose any personal interest (theirs or any member of their immediate families, or business entity they are a part of) in any property, whether selling or buying. These disclosures must be in writing and be provided prior to the signing of any contract.

Article 4

Realtors® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner’s agent or broker. In selling property they own, or in which they have any interest, Realtors® shall reveal their ownership or interest in writing to the purchaser or the purchaser’s representative. (Amended 1/00)

Standard of Practice 4-1

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by Realtors® prior to the signing of any contract. (Adopted 2/86)

Article 4 Case Study

Case #4-3: Disclosure of Family Interest

(Revised Case #13-4 May, 1988. Transferred to Article 4 November, 1994.)

REALTOR® A listed Client B’s home and subsequently advised him to accept an offer from Buyer C at less than the listed price. Client B later filed a complaint against REALTOR® A with the Board stating that REALTOR® A had not disclosed that Buyer C was REALTOR® A’s father-in-law; that REALTOR® A’s strong urging had convinced Client B, the seller, to accept an offer below the listed price; and that REALTOR® A had acted more in the interests of the buyer than in the best interests of the seller.

At the hearing, REALTOR® A defended his actions stating that Article 4 of the Code requires disclosure when the purchaser is a member of the REALTOR®’s immediate family, and that his father-in-law was not a member of REALTOR® A’s immediate family. REALTOR® A also demonstrated that he had presented two other offers to Client B, both lower than Buyer C’s offer, and stated that, in his opinion, the price paid by Buyer C had been the fair market price.

REALTOR® A’s defense was found by the Hearing Panel to be inadequate. The panel concluded that Article 4 forbids a REALTOR® to “acquire an interest in” property listed with him unless the interest is disclosed to the seller or the seller’s agent; that the possibility, even remote, of REALTOR® A’s acquiring an interest in the property from his father-in-law by inheritance gave the REALTOR® a potential interest in it; that REALTOR® A’s conduct was clearly contrary to the intent of Article 4, since interest in property created through a family relationship can be closer and more tangible than through a corporate relationship which is cited in the Code as an interest requiring disclosure. REALTOR® A was found to have violated Article 4 for failing to disclose to Client B that the buyer was his father-in-law.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.
**Article 5**

Article 5 is also self-explanatory and is related to the disclosure requirements discussed in Article 4 above. Article 6 reminds Realtors® that they are not to receive any commission, rebate or any other type of payment based on the transaction without full disclosure to that client as to what that payment is for and receiving permission to receive said payment. Article 7 is also related to compensation and disclosure – a Realtor® may not receive compensation from more than one party without disclosure to all parties and informed consent of the Realtor®’s client or clients.

**Article 5**

Realtors® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

**Article 5 Case Study**

*Case #5-1: Contemplated Interest in Property Appraised*  
(Reaffirmed Case #12-2 May, 1988. Transferred to Article 5 November, 1994.)

Seller A and Buyer B were negotiating the sale of an apartment building, but couldn’t agree on the price. Finally, they agreed that each would engage an appraiser and they would accept the average of the two appraisals as a fair price.

Seller A engaged REALTOR® C as his appraiser, and Buyer B engaged REALTOR® D. Both REALTORS® were informed of the agreement of the principals. The two appraisal reports were submitted. The principals averaged the two valuations and made the transaction at the price determined.

Six months later, it came to the attention of Seller A that REALTOR® C was managing the building that he had appraised. Upon making further inquiries he learned that REALTOR® C had, for several years, managed five other buildings owned by Buyer B, and that he had been Buyer B’s property manager at the time he accepted the appraisal assignment from Seller A.

At this point Seller A engaged REALTOR® E to make an appraisal of the building he had sold to Buyer B. REALTOR® E’s valuation was approximately 30% higher than that arrived at six months earlier by REALTOR® C.

These facts were set out in a complaint against REALTOR® C made by Seller A to the local Board of REALTORS®. The complaint charged that since REALTOR® C was an agent of Buyer B; since he managed all of Buyer B’s properties; since he had become manager of the property he had appraised for Seller A in connection with a sale to Buyer B; and since he had not disclosed his relationship to Buyer B, he had acted unethically, and in the interest of his major client had placed an excessively low valuation on the property he had appraised for Seller A.

At the hearing, Seller A also brought in a witness who stated that he had heard Buyer B say that he had made a good buy in purchasing Seller A’s building because Seller A’s appraiser was his (Buyer B’s) property manager.

Buyer B, appearing as a witness for REALTOR® C, disputed this and protested that he had paid a fair price. He substantiated REALTOR® C’s statement that management of the building formerly owned by Seller A was never discussed between them until after it had been purchased by Buyer B.

It was concluded by the Hearing Panel that whether or not management of the building was discussed between Buyer B and REALTOR® C prior to its purchase by Buyer B, REALTOR® C had a logically contemplated interest in it as a property manager in view of the fact that he had served as property manager for all other properties owned by Buyer B. In view of this contemplated interest, he was bound by the terms of Article 5 to disclose this interest to his appraisal client, Seller A. He had failed to do this, and so was found in violation of Article 5 of the Code of Ethics.

**Discussion:** For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

**Article 6**

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

When recommending real estate products or services (e.g., homeowner’s insurance, warranty programs, mortgage financing, title insurance, etc.), Realtors® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the Realtor® or Realtor®’s firm may receive as a direct result of such recommendation. (Amended 1/99)

- **Standard of Practice 6-1**

  Realtors® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. (Amended 5/88)

**Article 6 Case Study**

*Case #6-4: Acceptance of Rebates from Contractors*  
(Revised Case #16-4 May, 1988. Transferred to Article 6 November, 1994.)

REALTOR® A, who managed a 30-year-old apartment building for Client B, proposed a complete modernization plan for the building, obtained Client B’s approval, and carried out the work. Shortly after completion of the work, Client B filed a complaint with the Board of REALTORS® charging REALTOR® A with unethical conduct for receiving rebates or “kickbacks” from the contractors who did the work.
At the hearing, Client B presented written statements from the contractors to substantiate his charges.

REALTOR® A defended himself by stating that he had carried out all work involving the preparation of specifications, solicitation of bids, negotiations with the contractors, scheduling work, and supervising the improvement program; that he had presented all bids to the owner who had authorized acceptance of the most favorable bids; and that he and Client B had agreed on an appropriate fee for this service.

REALTOR® A also presented comparative data to show that Client B had received good value for his money.

After all of the contracts were signed and the work was under way, REALTOR® A found that his fee was inadequate for the time the work required; that he needed additional compensation but didn’t want to add to his client’s costs; and that when he explained his predicament to the contractors and asked for moderate rebates, they agreed.

Questioning by panel members revealed that the contractors felt that since they were being asked for rebates by the man who would supervise their work, they felt that they had no choice but to agree.

The Hearing Panel concluded that REALTOR® A was in violation of Article 6 of the Code of Ethics and that if he had miscalculated his fee with Client B, his only legitimate recourse would have been to renegotiate this fee with Client B.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 7

Article 7

In a transaction, Realtors® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the Realtor®’s client or clients. (Amended 1/93)

Article 7 Case Study

Case #7-1: Acceptance of Compensation from Buyer and Seller

(Adopted as Case #8-3 May, 1988. Transferred to Article 7 November, 1994.)

Buyer A engaged REALTOR® B to locate a small commercial property. Buyer A explained his exact specifications indicating that he did not wish to compromise. They agreed that if REALTOR® B could locate such a property within Buyer A’s price range, he—the buyer—would pay a finder’s fee to REALTOR® B.

Two weeks later, REALTOR® B called Buyer A to advise that Seller C had just listed a property with him that met all of Buyer A’s specifications except that the listed price was a bit higher than Buyer A wanted to pay. Buyer A inspected the property and liked it, but said he would adhere to his original price range. REALTOR® B called Buyer A three days later to say that Seller C had agreed to sell at Buyer A’s price. The sale was made and REALTOR® B collected a commission from Seller C and a finder’s fee from Buyer A which was not disclosed to Seller C, REALTOR® B’s client.

Several weeks later, Seller C learned about the finder’s fee that REALTOR® B had collected from Buyer A and filed a complaint with the Board of REALTORS® charging REALTOR® B with duplicity and unprofessional conduct. The complaint specified that when REALTOR® B had presented Buyer A’s offer at less than the listed price, he, the seller, was reluctant to accept it, but REALTOR® B had convinced him that the offer was a fair one and not likely to be improved upon in the current market; and that REALTOR® B had dwelt at length on certain disadvantageous features of the property in an attempt to promote acceptance of the offer. The complaint charged that REALTOR® B had actually been the agent of the buyer while holding himself out as the agent of the seller. Further, Seller C asserted that REALTOR® B had never mentioned that he was representing the buyer or intended to be compensated by the buyer.

At the hearing, REALTOR® B’s defense was that he had served both buyer and seller faithfully; that he had not accepted Seller C’s listing until after he had agreed to assist Buyer A in locating a property; and that in his judgment the listed price was excessive and the price actually paid was a fair price.

A Hearing Panel of the Board’s Professional Standards Committee, which heard the complaint, concluded that REALTOR® B had acted in violation of Article 7 of the Code of Ethics. His efforts to represent the buyer and the seller at the same time, and the fact that he intended to be compensated by both parties, should have been fully disclosed to all parties in advance.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 8

Article 8 mandates that Realtors® may not co-mingle any trust monies and must keep a separate account in an appropriate financial institution for those funds.

Article 8

Realtors® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients’ monies, and other like items.

Article 8 Case Study

Case #8-1: Failure to Put Deposit in Separate Account

(Adopted as Case #1-3 August, 1983. Transferred to Article 8 November, 1994.)

Buyer A engaged REALTOR® B to purchase a house. Buyer A deposited $10,000 in the REALTOR®’s office. REALTOR® B held the deposit and did nothing with it. After three months, Buyer A discovered that the deposit was missing. The deposit was found in a separate account of REALTOR® B.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.
REALTOR® A, a listing broker, obtained a signed offer to purchase, together with Buyer C’s check for $5,000 as an earnest money deposit. Buyer C’s offer was subject to the sale of his current residence. REALTOR® A presented the offer to Seller B who accepted it. REALTOR® A then inadvertently deposited the earnest money check in his personal checking account. Since Buyer C’s offer was contingent on the sale of his current home, Seller B’s house remained on the market.

A week later, REALTOR® A received another offer to purchase Seller B’s house from another broker and presented it to the seller as a back-up offer. Buyer C was informed about this new offer and reluctantly concluded that he would be unable to waive the sale contingency or proceed with the purchase of Seller B’s house. He then asked REALTOR® A for his $5,000 check back. REALTOR® A explained that he had mistakenly deposited Buyer C’s check in his personal bank account which had been attached since he received Buyer C’s offer, and he was temporarily unable to refund the deposit to Buyer C.

Buyer C filed a complaint with the Board of REALTORS®, which was received by the Grievance Committee. The Grievance Committee concluded that the complaint warranted a hearing and referred it to the Professional Standards Committee.

At the hearing, REALTOR® A explained that his bank account had been unexpectedly attached following the loss of a civil suit which he was appealing; that his deposit of Buyer C’s check in his personal account was a simple error in handling deposit slips; that he was arranging for the prompt release of his account; and that everything would be straightened out in three or four days, which should not be of great inconvenience to Buyer C.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 8 of the Code of Ethics for having failed to put Buyer C’s earnest money deposit in a special account separate from his personal funds.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 9

Article 9 is about the importance of getting everything in writing. Sometimes buyers and sellers have different notions of what should be included or excluded from the sale or lease. Always make sure these inclusions and exclusions are written into the transaction documents so that the parties are not relying on flyers, brochures, disclosure statements, or MLS listing information. Representations made in marketing literature are far less enforceable than provisions included in a purchase contract, if there is a dispute.

### Standard of Practice 9-1

For the protection of all parties, Realtors® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. (Amended 1/93)

### Standard of Practice 9-2

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, Realtors® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. (Adopted 1/07)

Example

Realtor® Anne represented Client Bob, the seller and Realtor® Chris represented Client Diane, the buyer. Realtor® Chris showed Client Diane Client Bob’s property and after reviewing the MLS listing, presented an offer which was accepted by Realtor® Anne on behalf of Client Bob. At that time Realtor® Chris verbally confirmed with Realtor® Anne that everything on the property disclosure sheet in the MLS was correct as to what was included in the sale. After that conversation, Realtor® Anne remembered that Client Bob had said he wanted to keep the draperies but neglected to amend the MLS listing information or the property disclosure statement in writing.

The transaction proceeded uneventfully but when Client Diane moved into the home, she discovered that all of the draperies, which had been indicated as included on the MLS listing, had been taken by the seller.

If the seller wouldn’t return the draperies and have them re-installed, who would be potentially at risk for an ethics complaint under Article 9?

Fortunately, in this case (which actually happened to the author), the seller returned the draperies and had them re-installed to the buyer’s satisfaction so all was well.

But it’s important to note that Realtor® Anne actually was in violation of Article 9 and could have been disciplined for neglecting to disclose this fact in writing and making sure all parties to the transaction had received properly executed copies of the revised documents.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.
Chapter Summary

We started this chapter by examining the word “ethics,” what it means, and how it relates to values and principles, standards, regulations and laws. We also briefly reviewed some history of the NAR Ethics Code and the structure of the Code as it exists today. We took a brief look at the Preamble and the Golden Rule. The remainder of the Chapter covered Articles 1-9, Duties to Clients and Customers, including case studies and examples related those Articles.

CHAPTER 2: DUTIES TO THE PUBLIC (ARTICLES 10-14)

Chapter Overview

Chapter Two of this course will review Articles 10-14 of the NAR Ethics Code. These articles deal with a Realtor®’s duties to the public. We’ll review Article 10 which deals with not denying professional services to any member of a protected class. We’ll also discuss Article 11 which prohibits Realtors® from performing services outside of their field of competence. We’ll take a look at Article 12 which deals with truth in advertising and marketing. We’ll also review Article 13 which reminds Realtors® that they are not lawyers and should not ever give legal advice. Finally, we’ll review Article 14 which reminds Realtors® that they are required to make full disclosure of all pertinent facts if charged with unethical practice. In each case, we’ll review the Article, the Standards of Practice and a case study which illustrates important principles in each Article.

Learning Objectives

Upon completion of this chapter, the student will be able to:

• Describe key concepts of Articles 10-14 of the NAR Code of Ethics

Article 10

Article 10 mandates that Realtors® may not deny professional services on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Remember the Golden Rule? Do unto others as you would have others do to you and treat every single client fairly and equally.

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 10-1
  When involved in the sale or lease of a residence, Realtors® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, Realtors® may provide other demographic information. (Adopted 1/94, Amended 1/06)

• Standard of Practice 10-2
  When not involved in the sale or lease of a residence, Realtors® may provide demographic information related to a property, transaction, or professional assignment to a party if such demographic information is (a) deemed by the Realtor® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. (Adopted 1/05, Renumbered 1/06)

• 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)

• Standard of Practice 10-4
  As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. (Adopted 1/00, Renumbered 1/05 and 1/06)

Article 10 and its Standards of Practice reiterate the duty never to discriminate against any protected class. It also provides guidelines by which we should address demographic questions and provides guidance with regard to non-discrimination in advertising. Article 10 also extends the requirement of non-discrimination to real estate employment practices.

Article 10 Case Study

Case #10-1: Equal Professional Services by the REALTOR®
(Reaffirmed May, 1988.)
A minority couple called on REALTOR® A and expressed interest in purchasing a home in the $130,000 to $145,000 price range with at least three bedrooms, a large lot, and located in the Cedar Ridge area of town. Being familiar with Cedar Ridge through handling of numerous listings in that area, REALTOR® A explained that houses in Cedar Ridge generally sold in the price range from $180,000 to $220,000. The couple thereafter indicated that they would like to see “what was available” within their economic means. After further discussion with the couple concerning their financial circumstances and the maximum price range they could afford, REALTOR® A concluded that the couple could not afford more than $137,500 as an absolute maximum. The couple was then shown homes which met the criteria they had described to REALTOR® A. However, although REALTOR® A discussed with the couple the amenities and assets of each of the properties shown to them, they expressed no interest in any of the properties shown. A few days later, the minority couple filed charges with the Secretary of the Board, charging REALTOR® A with a violation of Article 10 of the Code Ethics, alleging that REALTOR® A had violated the Article by an alleged act of racial steering in his service to the minority couple.

The Secretary promptly referred the complaint to the Grievance Committee, which conducted a preliminary review and referred the complaint back to the Secretary, instructing that a hearing be arranged before a Hearing Panel of the Professional Standards Committee. REALTOR® A was duly noticed and provided with an opportunity to make his response to the complaint.

At the hearing, the minority couple elaborated upon their charge of the alleged racial steering by REALTOR® A, telling the Hearing Panel that they had specifically expressed an interest in purchasing a home in the Cedar Ridge area, but were not shown any homes in Cedar Ridge. REALTOR® A responded by producing written records documenting the housing preference of the couple as they had described it to him, including price range and demonstrating that he had shown them a number of listings that met the requirements as expressed by them, although admittedly none of the properties shown were located in Cedar Ridge. However, REALTOR® A explained that he had advised the minority couple that there were no listings available in Cedar Ridge falling within the price range expressed by them. Further, REALTOR® A produced listing and sales information concerning numerous homes in Cedar Ridge which confirmed an average sales price of $180,000 to $220,000. REALTOR® A told the Hearing Panel that he had, in fact, offered equal professional service to the minority couple by showing them properties which met the criteria they had presented to him. He pointed out to the Hearing Panel that the couple was charging him with “racial steering” which presumably they were relating to the denial of equal professional service. REALTOR® A stated, “If there were listings in Cedar Ridge in the $130,000 to $145,000 price range with at least three bedrooms and a large lot, and I had refused to show them such listings, then they might have a point in their charge. But there are no such listings available now, nor have there been at any time since the original development of the Cedar Ridge area five years ago. I could not show them what did not and does not exist.”

The Hearing Panel concluded that REALTOR® A had properly met his obligation to offer equal professional service and was not in violation of Article 10.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 11

Article 11 states that Realtors® may not provide services outside of their field of competence without disclosing it to the client. For instance, a residential real estate agent with no commercial real estate experience may not provide commercial real estate services without first informing the client of his or her lack of expertise.

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)

- 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

Know the Code: Your Guide to the Code of Ethics
10. disclosure of whether the Realtor® has any conflicts of interest (Amended 1/14)

- **Standard of Practice 11-2**
The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the Realtor® is an agent or subagent, the obligations of a fiduciary. (Adopted 1/95)

- **Standard of Practice 11-3**
When Realtors® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and Realtor®. (Adopted 1/96)

- **Standard of Practice 11-4**
The competency required by Article 11 relates to services contracted for between Realtors® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. (Adopted 1/02)

Article 11 defines clear standards for competent practice. A Realtor® is bound to provide real estate services in areas in which they are competent. Obviously, this is to uphold the reputation of the profession and to serve the public with integrity. In addition, if a Realtor® is working in an area outside of his or her expertise, he or she is required to fully disclose this lack of expertise to the client, or engage the assistance of someone who is competent in that area.

**Article 11 Case Study**

**Case #11-1: Appraiser’s Competence for Assignment**

REALTOR® A sold a light industrial property to Buyer B, a laundry operator. Several months later, Buyer B engaged REALTOR® A’s services to appraise the property and to supply an appraisal report for use in possible merger with another laundry.

REALTOR® A carried out this appraisal assignment and submitted his report. Buyer (now Client) B was dissatisfied with the report feeling that the valuation, in comparison with the market price that he had paid was excessively low. Client B then engaged an appraiser specializing in industrial property, and after receiving the second appraisal report, filed a complaint with the Board of REALTORS® charging REALTOR® A with incompetent and unprofessional service as an appraiser.

At the hearing, questioning established that REALTOR® A could cite no other industrial property appraisal he had made, and that his appraisal experience had been limited exclusively to residential property. The hearing also established that when the client proposed the appraisal, REALTOR® A had readily accepted the assignment and that he had at no time disclosed the extent and limitations of this appraisal experience with his client.

REALTOR® A was found by the Hearing Panel to be in violation of Article 11.

**Discussion:** For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

**Page 10: Article 12**

Article 12 is about always presenting a “true picture” in your advertising, marketing, and other representations. Realtors must always adhere to truth in advertising and marketing, and must disclose their professional status in advertising. It’s important to note that this Article applies not just traditional marketing but also to social media, texting, email, etc. Make sure to review Standard of Practice 12-5 for guidance on the right way to present your identity as a real estate professional in social media venues.

**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)

- **Standard of Practice 12-1**
Realtors® may use the term “free” and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. (Amended 1/97)

- **Standard of Practice 12-2**
Realtors® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the Realtor® to obtain a benefit from a third party is clearly disclosed at the same time. (Amended 1/97)

- **Standard of Practice 12-3**
The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the Realtor® making the offer. However, Realtors® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the Realtor®’s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)
• **Standard of Practice 12-4**  
Realtors® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, Realtors® shall not quote a price different from that agreed upon with the seller/landlord. (Amended 1/93)

• **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. This Standard of Practice acknowledges that disclosing the name of the firm may not be practical in electronic displays of limited information (e.g., “thumbnails”, text messages, “tweets”, etc.). Such displays are exempt from the disclosure requirement established in this Standard of Practice, but only when linked to a display that includes all required disclosures. (Adopted 11/86, Amended 1/11)

• **Standard of Practice 12-6**  
Realtors®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as Realtors® or real estate licensees. (Amended 1/93)

• **Standard of Practice 12-7**  
Only Realtors® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. (Amended 1/96)

• **Standard of Practice 12-8**  
The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on Realtors®’ websites. Realtors® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a Realtor®’s website is no longer current or accurate, Realtors® shall promptly take corrective action. (Adopted 1/07)

• **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)

• **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)

• **Standard of Practice 12-11**  
Realtors® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. (Adopted 1/07)

• **Standard of Practice 12-12**  
Realtors® shall not:
   1. use URLs or domain names that present less than a true picture, or
   2. register URLs or domain names which, if used, would present less than a true picture. (Adopted 1/08)

• **Standard of Practice 12-13**  
The obligation to present a true picture in advertising, marketing, and representations allows Realtors® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. (Adopted 1/08)

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**Article 12 Case Study**

**Case #12-1: Absence of Name on Sign**


Prospect A observed a sign on a vacant lot reading: “For Sale—Call 330-5215.” Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised and offended that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR-ASSOCIATE® B in REALTOR® A’s office.

Prospect A filed a complaint against REALTOR® A and REALTOR-ASSOCIATE® B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR® A stated that he permitted REALTOR-ASSOCIATE® B to put up the sign. REALTOR-ASSOCIATE® B’s defense was that the sign was not a “formal” advertisement, such as a newspaper advertisement, business card, or billboard, to which he understood Article 12 to apply.
The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR-ASSOCIATE® B were in violation of Article 12.

**Discussion:** For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

### Article 13

Realtors® may not give legal advice, and must advise clients to seek legal counsel when applicable.

**Article 13**

Realtors® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

### Article 13 Case Study

**Case #13-1: Preparation of Instrument Unrelated to Real Estate Transaction**


Client A dropped in to see his friend, REALTOR® B, who had recently provided professional services to Client A’s company. Client A said the company was sending him on business to the Far East; that the trip would involve a good deal of air travel in remote areas; and that he would like to leave a power of attorney with his wife while he was gone “just in case.” He asked REALTOR® B if he would prepare a power of attorney for him and REALTOR® B said, “It’s a simple document. I’ll be glad to prepare one for you,” and did.

This action came to the attention of the Grievance Committee of the Board of REALTORS®, which, after review, filed a complaint with the Board’s Professional Standards Committee, charging REALTOR® B with a violation of Article 13 of the Code of Ethics.

REALTOR® B’s defense was that he understood Client A’s request to be essentially for a real estate service since from his general knowledge of Client A’s personal affairs, he knew that Client A could have no reason for giving his wife a power of attorney except to put her in a position to act in real estate transactions. He contended that because his preparation of a legal document was directly related to real estate matters, he had rendered real estate, not legal, services to Client A.

It was the judgment of the Hearing Panel that REALTOR® B’s defense was without merit; that by preparing the power of attorney, he had engaged in the practice of law in violation of Article 13 of the Code.

**Discussion:** For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

### Article 14

Realtors® must make full disclosure of all pertinent facts if charged with unethical practice. In addition, they may not obstruct any proceedings in any way, or intentionally impede the Board’s investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction.

**Article 14**

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, Realtors® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. (Amended 1/99)

- **Standard of Practice 14-1**
  Realtors® shall not be subject to disciplinary proceedings in more than one Board of Realtors® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. (Amended 1/95)

- **Standard of Practice 14-2**
  Realtors® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. (Amended 1/92)

- **Standard of Practice 14-3**
  Realtors® shall not obstruct the Board’s investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. (Adopted 11/87, Amended 1/99)

- **Standard of Practice 14-4**
  Realtors® shall not intentionally impede the Board’s investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. (Adopted 11/88)

Article 14 and its Standards of Practice provide the guidelines for disciplinary action related to the violation of the Code of Ethics. We will discuss the disciplinary procedure in detail later in this course.

### Article 14 Case Study

**Case #14-1: Establishing Procedure to be Followed in Handling Complaints**
A Board of REALTORS® received a complaint from REALTOR® A's client charging REALTOR® A with a violation of Article 1 of the Code of Ethics. The complaint was referred to the Chairperson of the Board's Grievance Committee, who sent a copy of it to REALTOR® A with a request that he respond and provide a specific document about the matter to the Grievance Committee for its preliminary review.

REALTOR® A responded with a denial of the charge, and a statement that he would appear at any hearing on the appointed date and would, at that time, present all pertinent facts. He went on to indicate that on the advice of legal counsel he was unwilling to place the requested document in the hands of the Grievance Committee in advance of any hearing.

The Grievance Committee then initiated its own complaint charging REALTOR® A with a violation of Article 14 for refusing to place the requested document before a proper tribunal.

A hearing of the Grievance Committee's complaint was held before a Hearing Panel of the Professional Standards Committee. At the hearing, REALTOR® A again stated that it was his intention to respond specifically and factually to the charge of violating Article 1 if the complaint came before an ethics Hearing Panel and at that time he would submit all pertinent facts, including the document in question.

It was the conclusion of the Hearing Panel that REALTOR® A's defense against the charge of violating Article 14 was not valid; and that the Grievance Committee could require advance submission of specific documents to the Grievance Committee based on the Board's professional standards procedures which authorized the Grievance Committee to request specific documents to enable the Grievance Committee to make determinations whether complaints warranted hearing. The panel found REALTOR® A in violation of Article 14 and directed him to give the requested documentation to the Grievance Committee in connection with its review of the charge of violating Article 1.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Chapter Summary

Chapter Two of this course covered Articles 10-14 of the NAR Ethics Code – the articles that define a Realtor®'s duties to the public. First, we reviewed Article 10 which deals with not denying professional services to any member of a protected class. We then discussed Article 11 which prohibits Realtors® from performing services outside of their field of competence. We also reviewed Article 12 which deals with truth in advertising and marketing. We took a look at Article 13 which reminds Realtors® that they are not lawyers and should not ever give legal advice. Finally, we reviewed Article 14 which reminds Realtors® that they are required to make full disclosure of all pertinent facts if charged with unethical practice. In each case, we reviewed the Article, the Standards of Practice and a case study which illustrated important principles in each Article.

CHAPTER 3: THREE: DUTIES TO REALTORS®
(ARTICLES 15-17)

Chapter Overview

Duties to Realtors® is the third and final section of the Code of Ethics. Articles 15-16 set forth the Standards of Practice Realtors® are required to follow in dealing with fellow Realtors® and our brokerages. Article 17 sets forth the manner in which disputes or alleged violations of the Code must be handled.

Learning Objectives

Upon completion of this chapter, the student will be able to:

- Describe key concepts of Articles 15-18 of the NAR Code of Ethics

Article 15

Realtors® must not knowingly or recklessly make false or misleading statements about other real estate professionals, including filing false or unfounded ethics complaints or knowingly or recklessly publishing, repeating, or republishing false or misleading statements made by others.

Article 15

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)

- Standard of Practice 15-1
  Realtors® shall not knowingly or recklessly file false or unfounded ethics complaints. (Adopted 1/00)

- 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)
REALTOR® Z had used a diagram to demonstrate his market share, contrasting it with those of several other firms. The ad showed that REALTOR® A had listed 10% of the properties in the MLS over the past three months.

REALTOR® A thought this was low. His analysis of MLS data showed his market share was 11%. REALTOR® A filed an ethics complaint against REALTOR® Z citing Article 15 of the Code of Ethics in that REALTOR® Z’s “obviously understated market share claim” was a “misleading statement about competitors.” REALTOR® A’s complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing, REALTOR® Z testified he had always been truthful in his advertising and that all claims were based in fact. He produced an affidavit from the Board’s MLS administrator which indicated that a programming error had resulted in miscalculations and, after careful recomputation, REALTOR® A’s market share over the past three months had been 10.9%. The administrator’s statement noted that this was the first time that information related to REALTOR® A’s listings or sales had been misstated on the system. “I relied on information from the MLS. It’s always been accurate and I had no reason to even suspect it was wrong last month,” said REALTOR® Z in his defense.

The Hearing Panel agreed with REALTOR® Z’s logic, noting that a REALTOR® should be able to rely on generally accurate information from reliable sources. They reasoned that if, on the other hand, the MLS had shown REALTOR® A having, for example, 1% of the market, then REALTOR® Z’s reliance on the information would have been “reckless” because REALTOR® A had generally had a 10–15% market share and a reasonable conclusion would have been that the information from the MLS was seriously flawed.

The Hearing Panel concluded that REALTOR® Z’s comparison with his competitors, while slightly inaccurate, was based on usually accurate and reliable information and had been made in good faith and while technically “misleading,” had not been “knowing” or “reckless.” REALTOR® Z was found not to have violated Article 15.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

Article 16

There are many descriptive Standards of Practice for Article 16 but really it all boils down to Realtors® may not work outside of the exclusive agreements with their clients and they may not “poach” clients through direct solicitation, regardless of the medium of that solicitation.

Article 16

Realtors® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other Realtors® have with clients. (Amended 1/04)

• Standard of Practice 16-1
  Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other Realtors® involving commission, fees, compensation, or other forms of payment or expenses. (Adopted 1/93, Amended 1/95)

• Standard of Practice 16-2
  Article 16 does not preclude Realtors® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another Realtor®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed “general” for purposes of this standard. (Amended 1/04)

  Article 16 is intended to recognize as unethical two basic types of solicitations:

  First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another Realtor® and

  Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another Realtor® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other Realtors® under offers of subagency or cooperation. (Amended 1/04)

• Standard of Practice 16-3
  Article 16 does not preclude Realtors® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management...
Standard of Practice 16-4
Realtors® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the Realtor®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the Realtor® may contact the owner to secure such information and may discuss the terms upon which the Realtor® might enter into a future contract. (Amended 1/04)

Standard of Practice 16-5
Realtors® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a Realtor®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the Realtor® may contact the buyer/tenant to secure such information and may discuss the terms upon which the Realtor® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. (Amended 1/94)

Standard of Practice 16-6
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 or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. (Amended 1/98)

Standard of Practice 16-7
The fact that a prospect has retained a Realtor® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other Realtors® from seeking such prospect’s future business. (Amended 1/04)

Standard of Practice 16-8
The fact that an exclusive agreement has been entered into with a Realtor® shall not preclude or inhibit any other Realtor® from entering into a similar agreement after the expiration of the prior agreement. (Amended 1/98)

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)

Standard of Practice 16-10
Realtors®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord’s representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord’s representative or broker no later than execution of a purchase agreement or lease. (Amended 1/04)

Standard of Practice 16-11
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)

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

Standard of Practice 16-12
Realtors®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants no later than execution of any purchase or lease agreement. (Amended 1/04)

Standard of Practice 16-13
All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement, shall be carried on with the client’s representative or broker, and not with the client, except with the consent of the client’s representative or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, Realtors® shall ask prospects whether they are a party to any exclusive representation agreement. Realtors® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects’ exclusive representatives or at the direction of prospects. (Adopted 1/93, Amended 1/04)

Standard of Practice 16-14
Realtors® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. (Amended 1/98)

Standard of Practice 16-15
In cooperative transactions Realtors® shall compensate cooperating Realtors® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other Realtors® without the prior express knowledge and consent of the cooperating broker.

Standard of Practice 16-16
Realtors®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to
modify the listing broker’s offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker’s agreement to modify the offer of compensation. (Amended 1/04)

- **Standard of Practice 16-17**
  Realtors®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker’s offer of cooperation and/or compensation to other brokers without the consent of the listing broker. (Amended 1/04)

- **Standard of Practice 16-18**
  Realtors® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers’ clients to other brokers or to create buyer/tenant relationships with listing brokers’ clients, unless such use is authorized by listing brokers. (Amended 1/02)

- **Standard of Practice 16-19**
  Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. (Amended 1/93)

- **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)

### Article 16 Case Study

**Case #16-2: Respect for Agency**

(Revised Case #21-6 May, 1988. Transferred to Article 16 November, 1994.)

Client A gave a 180-day exclusive right to sell listing of a commercial property to REALTOR® B, specifying that no “for sale” sign was to be placed on the property. REALTOR® B and his sales associates started an intensive sales effort which, after three months, had produced no offer to buy. But it had called attention to the fact that Client A’s property was for sale. When REALTOR® C heard of it, he called on Client A, saying that he understood that his property was, or soon would be, for sale, and that if Client A would list the property with him exclusively he felt confident that he could provide prompt action. Client A said the property was exclusively listed with REALTOR® B under a contract that still had about 90 days to run.

“In that case,” said REALTOR® C, “you are bound for the next 90 days to REALTOR® B. I have a really outstanding organization, constantly in touch with active buyers interested in this class of property. I am in a position to render you an exceptional service, and I will plan to call you again in 90 days or so.”

The property remained unsold during the term of REALTOR® B’s listing contract. REALTOR® C called again on Client A, and obtained his assurance that he would sign an exclusive listing of the property upon expiration of the listing contract.

When REALTOR® B called on Client A on the last day of the listing contract to seek its renewal, Client A told him of REALTOR® C’s two visits. “I was impressed by REALTOR® C’s assurance of superior service” Client A told REALTOR® B, “and in view of the fact that my listing with you produced no definite offer in the 180-day period, I have decided to give REALTOR® C a listing tomorrow.”

REALTOR® B filed a complaint with the Grievance Committee of the Board, outlined the facts, and charged that REALTOR® C’s conduct had been inconsistent with Article 16 of the Code of Ethics.

The Grievance Committee referred the matter to the Professional Standards Committee.

At the conclusion of the hearing, the panel found that REALTOR® C had violated Article 16 by failing to respect the exclusive agency of REALTOR® B. The panel’s decision advised that REALTOR® C’s original contact with Client A, made at a time when he had no knowledge of REALTOR® B’s exclusive listing, was not in itself unethical, but that as soon as he learned of REALTOR® B’s status as the client’s exclusive agent, he should have taken an attitude of respect for the agency of another REALTOR®, and refrained from any effort to get the listing until after the expiration date of the original contract.

REALTOR® C’s attitude of regarding the client’s relationship with REALTOR® B as a kind of misfortune, of presenting his own service as superior to REALTOR® B’s, and of suggesting to the client that, having a better capacity to serve him, he could wait until REALTOR® B’s listing had expired, was, the panel said, contrary to the respect for another REALTOR®’s exclusive agency required by Article 16.

The Hearing Panel’s decision further advised REALTOR® C that he would have conducted himself in accord with Article 16 if, upon learning of REALTOR® B’s status as exclusive agent, he had expressed his willingness to cooperate with REALTOR® B in the sale of Client A’s property.

**Discussion:** For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

### Article 17

Article 17 states that Realtors® agree to arbitration in the case of a violation of the Code of Ethics and agree to be bound by any resulting agreement or award.

**Article 17**

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between Realtors® (principals) associated with different firms, arising out of their relationship as Realtors®, the Realtors® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, Realtors® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

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

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of Realtors® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

- **Standard of Practice 17-1**
  The filing of litigation and refusal to withdraw from it by Realtors® in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

- **Standard of Practice 17-2**
  Article 17 does not require Realtors® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board’s facilities. The fact that all parties decline to participate in mediation does not relieve Realtors® of the duty to arbitrate.

  Article 17 does not require Realtors® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. (Amended 1/12)

- **Standard of Practice 17-3**
  Realtors®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other Realtors® absent a specific written agreement to the contrary. (Adopted 1/96)

- **Standard of Practice 17-4**
  Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

  1. Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07)

  2. Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07)

  3. Where a buyer or tenant representative is compensated by the buyer or landlord and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)

  4. Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97)

  5. Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (Adopted 1/05)

- **Standard of Practice 17-5**
  The obligation to arbitrate established in Article 17 includes disputes between Realtors® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the Realtor® (principal) requesting arbitration agrees to submit to the jurisdiction of; travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) Realtor®’s association, in instances where the respondent(s) Realtor®’s association determines that an arbitrable issue exists. (Adopted 1/07)

### Article 17 Case Study

**Case #17-1: Obligation to Submit to Arbitration**

[Image of people in a meeting]
REALTOR® A and REALTOR® B had been engaged in a cooperative transaction that resulted in a dispute regarding entitlement to compensation. Rather than requesting arbitration before the Board of REALTORS®, REALTOR® A filed suit against REALTOR® B for payment of the compensation he felt REALTOR® B owed him. Upon receiving notification of the lawsuit, REALTOR® B filed a request for arbitration with the Board, which was reviewed by the Grievance Committee and found to be a mandatory arbitration situation. REALTOR® A was advised of the Grievance Committee’s decision, but refused to withdraw from the lawsuit. Thereupon, REALTOR® B filed a complaint with the Board charging a violation of Article 17 as supported by Standard of Practice 17-1.

REALTOR® A was directed to be present at a hearing on the complaint before the Board of Directors. Evidence that REALTOR® B had sought REALTOR® A’s agreement to submit the dispute to arbitration was presented at the hearing.

REALTOR® A defended his action in filing the suit and refusing to submit to arbitration by asserting that under laws of the state, the Board of REALTORS® had no authority to bar his access to the courts or to require him to arbitrate his dispute with REALTOR® B.

The Board of Directors concluded that REALTOR® A was correct as to his legal right and as to the Board’s lack of any right to prevent him from filing a suit. It was pointed out to REALTOR® A, however, that the Board of REALTORS® is a voluntary organization, whose members accept certain specified obligations with respect to their relations with other REALTORS®, and that if he wished to continue as a member of the Board he would be obliged to adhere to the Board’s requirements as to arbitration.

Because REALTOR® A would not withdraw the litigation, the Board of Directors concluded that REALTOR® A was in violation of Article 17 for refusing to arbitrate in a mandatory arbitration situation. However, it was noted that if REALTOR® A had filed litigation against REALTOR® B, and had REALTOR® B then requested arbitration with the Grievance Committee determining that an arbitrable issue of a mandatory nature existed, REALTOR® B might have successfully petitioned the court to remand the matter to the Board for arbitration, and there would have been no finding of a violation of Article 17 since the Board’s arbitration process would have been ultimately complied with.

Discussion: For your own benefit, feel free to write down your thoughts on a separate sheet of paper.

CHAPTER 4: COMPLAINT PROCESS, ENFORCEMENT AND PATHWAYS TO PROFESSIONALISM

Chapter Overview

In this chapter, we will review who enforces the Code of Ethics and Standards of Practice and we’ll examine the process, from filing a complaint, to how complaints are handled and the Committees overseeing the enforcement process, to the discipline that may be issued, and the differences between mediation and arbitration. We’ll also examine the content of NAR’s Pathways to Professionalism document.

Learning Objectives

Upon completion of this chapter, the student will be able to:

- Recognize who enforces the Code of Ethics and how the complaint process works
- Distinguish between mediation and arbitration
- Identify key parts of Pathways to Professionalism

Enforcement

The Code of Ethics and Standards of Practice provide specific guidelines by which Realtors® must conduct their business. The National Association of REALTORS® (NAR) creates and amends the Code of Ethics; however, NAR does not provide the enforcement of the Code.

Either the local or state Association of Realtors® provides for the enforcement of the Code. That obligation includes providing mediation services and conducting arbitration hearings. However, it’s important to note that
Associations do not determine whether the law or real estate regulations have been violated. Those decisions can only be made by the regulatory authorities or courts.

For the purpose of this chapter, the term “Association” will refer to the state or local Association of Realtors® which handles the enforcement of the Code. In the industry, both ethics violations and monetary disputes can be brought under Code enforcement. We will look at the differences between ethics and arbitration disputes and follow the process as it relates to each.

**Ethics and Arbitration**

An ethics complaint deals with questions concerning whether an Article of the Code has been violated by a Realtor®. This could be considered a “conduct” complaint.

A monetary complaint is an arbitration request. In accord with Article 17 of the Code of Ethics, one agrees to arbitrate monetary disputes with Realtors® of other firms rather than litigate.

**Ethics Complaint**

Anyone can file an ethics complaint – a member of the public or a Realtor®. When an ethics complaint is filed, it first goes to the Grievance Committee, which is comprised of Realtors® appointed by the Association President. The purpose of the Grievance Committee is to determine if the complaint involves a potential violation and whether the complaint was appropriately filed. In essence, this is a “screening process.” If the Grievance Committee finds that there is a potential violation, and that the complaint has been appropriately filed, the complaint then goes to a hearing panel of the Professional Standards Committee. If the answer to either of those criteria is “no,” the case is dismissed.

It’s important to note that an ethics complaint must be filed within 180 days of when the facts of the complaint could have been known by the complainant with reasonable diligence.

The Professional Standards Committee holds the actual hearings on the cases that are reviewed by and moved forward from the Grievance Committee. The Professional Standards Committee is also made up of Realtors® who have been appointed by the Association President. The hearing panel of the Professional Standards Committee determines if a violation has actually occurred.

The hearing panel must provide the respondents with a due process hearing. Some samples of due process are:

- Advance notification of the nature of the complaint
- Adequate time to prepare a defense
- The right to present witnesses, testimony, and evidence
- The right to cross-examine the complainant and complainant’s witnesses
- The right to legal counsel
- An impartial panel of peers
- Access to an appeal process

The hearing panel must find that there is “clear, strong, and convincing” proof that a violation occurred in order to find a Realtor® in violation of the Ethics Code.

After the hearing, the panel will meet privately to determine if a violation of the code was proven by clear, strong, and convincing evidence. If the respondent is found to be violation of the Ethics Code, then the hearing panel will determine the discipline to be recommended. It’s important to note that the Professional Standards Committee cannot take any action against the Realtor®’s license. License suspensions, terminations, etc., are governed by the state licensing authority, not NAR.

The types of authorized discipline that may be issued by NAR are:

- Letter of Warning
- Letter of Reprimand
- Education Requirements
- Fine not to exceed $5,000
- Probation for one year or less
- Suspension for not less than 30 days, or more than one year
- Expulsion from membership for a period of one to three years
- Suspension or termination of MLS privileges
- In addition, an administrative processing fee may be imposed (not to exceed $500).

**Arbitration**

As we discussed previously, arbitration refers to a money claim, rather than a conduct claim. In this case, the complaint being filed is called a “Request for Arbitration.”
For a dispute to qualify for arbitration, it must include three conditions:

1. The dispute must be a contractual dispute or a non-contractual dispute as specified in Standard of Practice 17-4.
2. The dispute must be between Realtors® associated with different firms. (If the dispute is between Realtors® in the same firm, arbitration is voluntary, and all parties must agree to the arbitration.)
3. The dispute must have arisen out of the parties' relationship as Realtors®, meaning that typically, only real estate related disputes are arbitrated.

Just as with an ethics complaint, the Grievance Committee will first review the request for arbitration.

It's important to note that a request for arbitration must be filed within 180 days of the closing of the transaction, or 180 days from when the facts of the request could have been known with the exercise of reasonable diligence, whichever is later.

The Grievance Committee must insure that the procedural issues are correct, as well as determine "if the allegations in the request for arbitration are taken as true on their face, is the dispute related to a real estate transaction and is it properly arbitrable, i.e., is there some basis on which an award could be based?"

As with the ethics complaints we discussed previously, if the Grievance Committee finds that there is a basis for arbitration, the case moves forward to the Professional Standards Committee for a hearing with a hearing panel. The hearing panel then determines which party is entitled to the disputed funds by conducting a full due process hearing, as described earlier. The prevailing party must prove they are entitled to the disputed funds by a "preponderance" of the evidence (more likely than not). An arbitration award can be enforced by the courts.

If the Grievance Committee finds there is no basis for arbitration, then the case is dismissed.

**Mediation**

Mediation is a voluntary process in which a trained neutral party (mediator) assists disputing parties to come to a mutually acceptable resolution to their dispute. Every Association must provide mediation services to their members. As a reminder, many disputes can be resolved through mediation before ever going to arbitration or litigation. Mediation can be an excellent way to avoid either of these.

**Respect for the Public**

This is a list of professional courtesies for use by Realtors® on a voluntary basis. While the Code of Ethics and Standards of Practice of NAR 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.

**Pathways to Professionalism**

**Respect for the Public**

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

21. Do not tell people what you think—tell them what you know.

**Respect for Property**

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

**Respect for Peers**

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

(Revised 11/13)

**Pathways to Professionalism**

Although the items included in Pathways to Professionalism may seem elementary, these simple courtesies are often overlooked, and neglecting any of them can be cause for ill will, ruined reputations, and failed transactions. Here are some situations which could have turned out differently if the suggestions in Pathways to Professionalism had been followed.

An agent allowed another agent to hold their listing open. A couple of hours into the open house, the listing agent decided to stop by to see how the open house was going. Upon entering the property, the listing agent was faced with flooding water running through the house, onto the carpeting, flowing into several rooms. The agent holding the open house explained that apparently the toilet was leaking, but he didn’t want to turn off the water because he wasn’t sure if that is what the agent or homeowner would want. So, he let it run, called no one, and escorted attendees around sloshing through the water.

Needless to say, the listing agent was very upset. How should this situation have been handled? A simple, immediate phone call to the listing agent at the first sign of trouble would have saved a lot of trouble, mess, and ill will. Mitigating the damage would have been prudent, by turning off the source of the water leak, but first and foremost, the listing agent should have been notified instantly.

Another scenario: an agent is showing a home to a prospective buyer and sets off the home’s security system. Although the system codes have been provided, she cannot turn it off. What should she do? Immediately call the listing agent, of course! Keep in mind that many security systems are monitored, and if police respond to the alarm, quite often the homeowner is charged. So, waiting to call the listing agent could result in a dispute over unexpected charges from the “false” alarm.
Another common occurrence: Upon showing a property, you notice that all of the window treatments are closed, and you know that the home will show so much better with all of the blinds and draperies open to let the light in and show off the views. So, you proceed to open all of the window treatments, knowing that it shows better (and to help educate the seller), and you leave them open. Later that day, you receive an irate phone call from the listing agent (or the seller), upset at the additional cost of cooling the home with all window treatments open. The seller is upset that their property has been tampered with, and the listing agent’s relationship with that seller is suddenly compromised. It is imperative that you leave the home exactly as you found it.

It is quite common, while showing properties, to get behind your projected time schedule, or to have your buyer decide to make an offer on a property and not wish to see the rest of the properties that you had scheduled, or perhaps more commonly, to drive up to a property that you have scheduled to show and your buyer doesn’t like it from the outside and doesn’t want to go in. Is it really necessary to call the sellers with whom you have scheduled showings with to let them know that your timeframe has changed or that the buyer won’t be looking at their property today?

Yes, it is imperative that you do! Sellers get very, very upset when they have cleaned their property, put the pets out, planned on getting out of the house, or prepared in some way for your showing, and you don’t show up, don’t show up within the timeframe that was agreed upon, and don’t call. It is disrespectful of the sellers, and it paints a very unprofessional picture of all Realtors®. These kinds of “innocent” acts cause the public to dislike the profession as a whole. In addition, you never know if your buyer may change her mind. If she should wish to see and ultimately write an offer on one of those properties of a seller to whom you were disrespectful, you may have alienated the very person with whom you will be negotiating.

**Chapter Summary**

In this chapter, we reviewed the enforcement of the NAR Code of Ethics and Standards of Practice and we examined the process, from filing a complaint, to how complaints are handled and the Committee’s oversight of the enforcement process, to the discipline that may be issued. We also looked at the differences between mediation and arbitration. We also examined the content of NAR’s Pathways to Professionalism document.