

The Code of Ethics: Our Promise of Professionalism

The REALTORS® Code of Ethics
Quadrennial Member Education Program

Third Cycle

Participant's Guide



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Objectives

Upon completion of “The Code of Ethics: Our Promise of Professionalism” course, participants will be able to:

- identify key aspirational concepts found in the Preamble to the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics
- describe “general business” ethics, and compare and contrast the REALTORS®’ Code of Ethics with business ethics, generally
- describe the concepts established in Articles 1, 2, 12, and 17 of the Code of Ethics
- identify possible violations of the Code of Ethics specifically related to the Articles cited above, after participating in interactive learning methods (case studies, quizzes, role plays, demonstrations, and group discussions about fact scenarios)
- describe the professional standards process for enforcing the Code of Ethics, including the duty to arbitrate
- identify critical elements of due process as they relate to Code enforcement
- identify factors considered by hearing panels in procuring cause disputes

Exercise: Ice-breaker

Instructions: Read each statement and select the Article of the Code of Ethics from the list below that the statement most closely describes. Write the correct Article number in the space next to each statement. No Articles are to be selected twice.

NOTE: The statements in this exercise do not fully represent the comprehensive ethical principles of each Article of the Code of Ethics. To gain a full understanding of the principles of the REALTORS® Code of Ethics, each Article must be read and understood in its entirety.

Choose from Articles: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17	
1. Make only truthful and objective statements.	_____
2. Avoid the unauthorized practice of law.	_____
3. Participate in professional standards enforcement.	_____
4. Keep client funds in separate escrow accounts.	_____
5. Receive compensation from one party only with informed consent.	_____
6. Respect exclusive relationships.	_____
7. Cooperate with other brokers.	_____
8. Disclose present or contemplated interests in property.	_____
9. Treat all parties honestly.	_____
10. Arbitrate contractual disputes.	_____
11. Equal professional services for all.	_____
12. Make your "true position" known when presenting offers.	_____
13. Be competent in your field of practice.	_____
14. Get transactional details in writing.	_____
15. Disclose pertinent facts.	_____
16. Disclose financial benefits from recommending products/services.	_____
17. Paint a true picture in advertising.	_____

Part 1: History of the Code of Ethics

1. Pre-1900

- There was no licensing of real estate practitioners.
- Speculation, exploitation, and disorder was the rule.
- *Caveat emptor* (buyer beware) governed transactions.

2. NATIONAL ASSOCIATION OF REALTORS® Formed in 1908

- The Code of Ethics was adopted in 1913 to establish professional standards of conduct.
- The Code of Ethics was the first business ethical code, after those of medicine, engineering, and law.
 - Service to the public
 - Commitment to professionalism
- The original Code included “Duties to Clients” and “Duties to Other Brokers.”

3. Code of Ethics as Basis for Later-adopted License Laws

4. Code Requirements

Since its inception, the Code has required:

- Arbitration of contractual disputes between/among REALTORS®
- Respect for other brokers' exclusive relationships with clients
- Cooperation between members

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

1. Business Ethics

- What are "business ethics?"
 - Industry codes and standards
 - Company policies and practices
 - Individual values
- Business ethics and legal standards
- Business ethics and the REALTORS® Code of Ethics

Note: REALTORS® engage in many specialty areas and may be subject to the various codes and canons of those fields (such as legal ethics, the Uniform Standards of Professional Appraisal Practice [USPAP], the National Auctioneers Association [NAA] Code of Ethics, and the codes of the NATIONAL ASSOCIATION OF REALTORS®' Institutes, Societies, and Councils, etc.). Regardless of their real estate specialties or fields of practice, all REALTORS® are bound by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

2. Aspirational Concepts of the Preamble to the Code

Preamble

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

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

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

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

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

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

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

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

2. Aspirational Concepts of the Preamble to the Code (continued)

- Under all is the land . . .
- The Golden Rule
- “Widely allocated ownership” and “widest distribution of land ownership”
- Maintain and improve the standards of our calling.
- Share our common responsibility for the integrity and honor of the real estate profession.
- Become and remain informed about issues affecting real estate.
- Share your experience and expertise with others.
- Identify and eliminate practices that damage the public or might discredit or bring dishonor to the real estate profession.
- Urge exclusive representation of clients.
- Refrain from taking unfair advantage of your competitors.
- Don’t make unsolicited comments about other practitioners.
- If your opinion is sought about a competitor (or if you believe a comment is necessary), offer it in an objective, professional manner.
- Remember, the term “REALTOR®” stands for competency, fairness, high integrity, moral conduct in business relations.
- Keep in mind that no inducement of profit or instruction from clients can justify departure from the Code’s duties.

Important Note: The Preamble may **not** be the basis for disciplining a REALTOR®.

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

3. The Structure of the Code and How It Is Amended

- 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

Important Note: Only violations of the Articles can result in disciplinary action.

- The Standards of Practice support, interpret, and amplify the Articles under which they are stated
 - REALTORS® may not be found in violation of a Standard of Practice, only its foundational Article.
 - Standards of Practice may be cited in support of an alleged violation of an Article (such as a violation of Article 1, as interpreted by Standard of Practice 1-3).
- The "Official Case Interpretations" are specific fact situations that explain Articles and/or Standards of Practice
- How the Code evolves
 - When needed, amendments to the Code, the Standards of Practice, and the Official Interpretations are made at the NAR Midyear Meetings and the REALTORS® Conference and Expo.
 - The NAR Interpretations and Procedures Subcommittee frequently makes recommendations to the Professional Standards Committee about enhancements to professional standards procedures and to the Code of Ethics.
 - All proposed changes to the Code and to the policies and procedures by which the Code is enforced must be approved by the Board of Directors. Amendments to the 17 Articles must also be approved by the Delegate Body.

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

4. The Code and the Law

- The Code must be reasonably and consistently construed with the law
- The Code imposes duties above and in addition to the duties imposed by law or regulation
- The Code restates certain fundamental legal principles (contract, agency, fair housing)

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

5. Pathways to Professionalism

- Is a comprehensive list of service criteria for the industry and professional courtesies for REALTORS® to enhance their professional conduct.
- Three major sections
 - Respect for the public
 - Respect for property
 - Respect for peers

Part 2: Business Ethics, NAR Code of Ethics, and Pathways to Professionalism

Exercise: Pathways to Professionalism

Instructions: Break into groups and identify three areas in the “Pathways to Professionalism” document that relate to your market. Select a group spokesperson to summarize the group’s discussion.

Pathways to Professionalism

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

Respect for the Public

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

Pathways to Professionalism (continued)

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.

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.

Part 3: Enforcement of the Code of Ethics

1. Background

- Associations of REALTORS® are responsible for enforcing the Code of Ethics. That obligation includes providing mediation services and conducting arbitration hearings.
- Only REALTOR® and REALTOR-ASSOCIATE® members are subject to the Code of Ethics. Associations in which REALTORS® hold membership and/or participate or access MLS have jurisdiction over those individuals to receive and resolve ethics complaints and arbitration requests.
- Associations do not determine whether law or real estate regulations have been violated. Those decisions can only be made by the regulatory authorities or courts.
- Often, difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate, ongoing communication.
- Open, constructive discussion often resolves questions or differences, diminishing the need for further action.

Part 3: Enforcement of the Code of Ethics

2. REALTOR® Dispute Resolution

If REALTORS® cannot settle disagreements between/among themselves, two options are available to them – (1) informal dispute resolution and (2) filing an ethics complaint and/or an arbitration request.

▪ **Option #1: Informal Dispute Resolution**

- **Ombudsman:** A voluntary process in ethics where the parties communicate with an ombudsman whose primary role is communication and conciliation, not adjudication. Ombudsmen do not determine whether ethics violations have occurred; rather they anticipate, identify, and help resolve misunderstandings and disagreements before they ripen into disputes and possible charges of unethical conduct.
- **Mediation:** A voluntary process through which the parties meet with a mediator who helps facilitate a mutually acceptable resolution.

▪ **Option #2: Ethics Complaints and Arbitration Requests**

- **Ethics:** Ask, “Is there a possible violation of the Code of Ethics?”
- **Arbitration:** Ask, “Is there an arbitrable issue – a monetary dispute?” (Typically a dispute over entitlement to cooperative commission in a transaction.)

Part 3: Enforcement of the Code of Ethics

3. Informal Dispute Resolution – Ombudsman Program

- Only available if offered as a service of the local association of REALTORS®.
- Voluntary on the part of REALTORS® and consumers.
- Associations have considerable latitude in developing criteria for serving as an ombudsman. Ombudsmen should be familiar with the Code of Ethics, state real estate regulations, and current real estate practices.
- REALTORS®, staff, and others may act as ombudsmen.
- Ombudsmen can:
 - field and respond to inquiries and complaints about real estate transactions, ethical practice, and Code enforcement issues
 - receive and respond to questions and complaints about members, solicit responses, and meet with the disputing parties
- Parties may decline to use ombudsmen services
- Ethics complaints resolved through an ombudsman are considered dismissed.
- Failure or refusal of a member to comply with the terms of a mutually agreed upon resolution permits the complaining party to file or re-file an ethics complaint. The filing deadline is the date when the matter was originally brought to the attention of the association.

Part 3: Enforcement of the Code of Ethics

4. Informal Dispute Resolution – Mediation Program

- Mediation is the preferred dispute resolution tool of the REALTOR® organization
- Voluntary
- Vehicle for creating a mutually acceptable resolution of disputes (instead of having a decision imposed by a hearing panel)
- Must be available to all REALTORS®
- Local association option: Mediation may be offered to disputants before or after a grievance committee's review of arbitration requests. If offered before, then mediation must be offered again after the grievance committee determines an arbitrable matter exists.
- Process
 - Disputing parties meet with a mediator appointed by the association.
 - Parties explain their issues and positions and have an opportunity to ask each other questions.
 - Mediators use a wide variety of techniques to move the parties toward a mutually acceptable resolution.
 - If an agreement is reached, then the parties put the agreement into a signed document expressing the terms, and no arbitration hearing is held.
- Mediation compared with arbitration

Mediation	Arbitration
Low cost	Moderate cost
Little delay	Moderate delay
Maximum range of solutions	Win/lose/split
Parties control the outcome	Arbitrators control the outcome
Uncertain closure	Definite closure
Maintains/improves relationships	May harm relationships

- Additional mediation resources: "Mediation – The Alternative for Win-Win" article by Bruce H. Aydt, ABR, ABRM, CRB, © Copyright 2001 and the "No Losers in Mediation" article, first published in the September/October 2001 issue of *Real Estate Business*.

Part 3: Enforcement of the Code of Ethics

5. Formal Dispute Resolution – Filing an Ethics Complaint

- Who can file a complaint?
- Grievance committee in ethics
 - A screening body comprised of members of the association.
 - Answers key question: “If the allegations in the complaint are taken as true on their face, is it possible a violation of the Code of Ethics occurred?”

Important Note: A grievance committee’s review of an ethics complaint is not a hearing on the merits, but rather a preliminary review to determine if the complaint requires a hearing.

- Ethics hearing panel
 - Conducts full “due process” hearings, including sworn testimony, counsel, witnesses, and evidence.
 - Is comprised of members of an association’s professional standards committee.
 - After a hearing, decides in executive session whether there has been a violation of the Code of Ethics. Violations of the Code must be supported by clear, strong, and convincing proof.
 - Must also determine the discipline (if any) to be imposed on the violator when a violation of the Code of Ethics has been found
- Authorized discipline and administrative processing fees
 - Letter of Warning
 - Letter of Reprimand
 - Education
 - 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 one to three years
 - Suspension or termination of MLS privileges.
 - Administrative processing fee (if found in violation) not to exceed \$500
- The primary emphasis of discipline for an ethics violation is educational, to create a heightened awareness of and appreciation for the Code. More serious or repeated violations might lead to more severe forms of discipline.

Note: Administrative processing fees are not discipline. Fees should not to be assessed on a case-by-case basis, but consistently, subject to association policy.

Part 3: Enforcement of the Code of Ethics

6. Formal Dispute Resolution – Filing an Arbitration Request

- Authority to conduct arbitration is established in Article 17 of the Code of Ethics and in the state arbitration statute
- Article 17 establishes arbitration can occur when there are:
 - contractual disputes or specific non-contractual disputes (see Standard of Practice 17-4)
 - between REALTORS® (principals) associated with different firms
 - arising out of their relationship as REALTORS®

Note: Although less common, clients also may invoke mandatory arbitration against their REALTOR® (principal).

- Grievance committee in arbitration
 - Performs an initial screening function similar to its role in reviewing ethics complaints.
 - Asks key question: “If the claims in the request for arbitration are taken as true on their face, is the matter at issue related to a real estate transaction and properly arbitrable?” (Is there some basis on which an arbitration award could be based?)
- **Note:** A grievance committee’s review of an arbitration request is not a hearing on the merits, but rather a preliminary review to determine if a hearing is warranted.
- Arbitration hearing panel
 - Conducts full “due process” hearing, including sworn testimony, counsel, witnesses, and evidence.
 - Comprised of members of an association’s professional standards committee.
 - After a hearing, decides in executive session who is entitled to an award, as demonstrated by a preponderance of the evidence.
- Payment of awards
 - Awards may be judicially enforced when not paid by the nonprevailing party.
 - Many associations require that when awards are not paid, an equivalent amount must be deposited with the association, pending review of the hearing process or during the pendency of any legal challenge.

Part 4: Concepts of Procuring Cause in Arbitration

1. NAR's Arbitration Guidelines

- Published in the *Code of Ethics and Arbitration Manual*.
- Guide hearing panels in resolving arbitrable issues.
- Focus primarily on “procuring cause,” because that is the determiner of most disputes between brokers.

2. Key Factors in Procuring Cause Disputes

- There are no predetermined rules of entitlement.
- Hearing panels must consider the entire course of events.
- Events such as the first property showing, writing a successful offer, or an existing agency relationship with the buyer are not, in and of themselves, exclusive determiners of procuring cause/entitlement.
- *Black's Law Dictionary*, Fifth Edition, defines “procuring cause” as, “The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object.”
- Or, as the Arkansas Supreme Court said: “It's not the squirrel that gathers the nuts, but the one who shakes the tree [who is entitled to be paid].”

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

1. Article 1

- Protect and promote your clients' interests.
- This obligation to your clients is primary.
- With that duty in mind, REALTORS® must also treat all parties honestly.
- Standard of Practice 1-2 defines key terms, including "client," "customer," "agent," and "broker".

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 1 Case Study (Based on Case Interpretation #1-26)

REALTOR® Leo is a sales associate with Done Right, REALTORS®. To promote Done Right's in-house listings, the firm's principals offer \$1,000 bonuses to the company's sales associates for each listing sold.

Dr. Newcomer, a recent transferee to the town, enters into a buyer's representation agreement with Done Right, REALTORS® through REALTOR® Leo.

Dr. Newcomer explains he has specific needs, foremost of which is that any home he purchases must be convenient for and readily accessible to Dr. Newcomer's spouse, who is physically challenged. "Part of my wife's physical conditioning program is swimming," says Dr. Newcomer. "So," he explains, "in addition to everything else, I am looking for a home with a pool or room to build a pool."

During the next few days, REALTOR® Leo shows Dr. Newcomer several properties in the Blackacre Subdivision, all of which are listed with Done Right, including one with an outdoor swimming pool. Not included among the properties shown to Dr. Newcomer are several similar homes in Blackacre that are listed with other firms, including one with an indoor pool.

After considering the properties he sees with REALTOR® Leo, Dr. Newcomer makes an offer on the home with the outdoor pool. His offer is accepted, and the transaction closes.

Several months later, REALTOR® Leo receives notice that an ethics complaint has been filed against him by Dr. Newcomer. From a colleague at the hospital who lives on the same block, Dr. Newcomer learned about the home with the indoor pool that REALTOR® Leo failed to show him when Dr. Newcomer was looking for just the right property. The complaint alleges that REALTOR® Leo put his own interests and those of Done Right ahead of Dr. Newcomer's interests by exclusively promoting Done Right's listings and by not telling Dr. Newcomer about the similarly priced property with the indoor pool. Dr. Newcomer also says in the complaint that he believes the unshown property suited his family's needs much better than the property he did purchase, because his wife would have been able to use the pool all year long. The complaint spells out that REALTOR® Leo received a bonus for selling one of Done Right's listings to Dr. Newcomer, and that Dr. Newcomer believes that REALTOR® Leo's failure to tell him about the house with the indoor pool was motivated by REALTOR® Leo's desire for the bonus.

During the hearing, REALTOR® Leo defends his actions, explaining that properties rarely meet all of a potential purchaser's desires, and that he made Dr. Newcomer aware of several properties that met most of his requirements, including one property with an outdoor pool. REALTOR® Leo goes on to say that Dr. Newcomer must have been satisfied, because he ultimately purchased that home. (Continued)

When questioned by the hearing panel, REALTOR® Leo acknowledges he knew about but did not show the house with the indoor pool to Dr. Newcomer. He concedes that a year-round, indoor pool was better suited to the family's needs than a seasonal, outdoor pool. He also admits that failing to tell Dr. Newcomer about the house with the indoor pool was, at least in part, motivated by the prospect of the bonus offered by his firm. "But," he also argues, "aside from the indoor pool, that house is no different than the one that Dr. Newcomer bought."

Questions

1. REALTOR® Leo's obligations under Article 1 call for him to (check all that apply):
 - A. find Dr. Newcomer a house that he is willing to buy
 - B. show Dr Newcomer all properties that meet his specific needs and requirements, regardless of whether those properties are listed with Done Right, REALTORS® or another firm
 - C. subordinate his own interests to those of Dr Newcomer
 - D. explain that he honestly believes other physical conditioning programs might be better than swimming for Dr. Newcomer's wife

2. Article 1 requires REALTOR® Leo to disclose the \$1,000 bonus at the time of entering into the exclusive buyer's representation agreement with Dr. Newcomer.
 - A. True
 - B. False

3. If a second offer was submitted for the property by another real estate office at the same time as Dr. Newcomer's offer was submitted, what disclosures to that cooperating broker, if any, would Done Right REALTORS® be required to make?
 - A. The existence of Dr. Newcomer's offer
 - A. That Dr Newcomer's offer was obtained by another licensee within Done Right REALTORS®
 - C. The existence of Dr. Newcomer's offer and that it was obtained by another licensee within Done Right REALTORS®, but only if asked by the other cooperating broker and given approval to do so by the seller
 - D. There are no disclosure requirements for multiple offer situations

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

2. Article 2

- Avoid exaggeration, misrepresentation and concealment of pertinent facts about the property or the transaction
- But there is no obligation to discover latent defects, matters outside scope of license, or matters confidential under agency or non-agency relationships

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 2 Case Study (Based on Case Interpretation #2-7)

Homebuilder REALTOR® Dean shows one of his newly constructed houses to Buyer Bert. Bert sees some kind of construction beginning nearby, and asks REALTOR® Dean about it. “I really don’t know,” says REALTOR® Dean, “but I believe it’s the attractive new shopping center planned for this area.”

Following Buyer Bert’s purchase of one of the houses, Buyer Bert learns that the “construction” actually is a bottling plant, and the area adjacent to it is zoned as “industrial”. Buyer Bert files a complaint with the board of REALTORS, charging REALTOR Dean with unethical conduct for failing to disclose a pertinent fact. He says in his complaint that, had he known about the proximity of the new bottling plant when he first saw the house, he would not have purchased it.

During the ethics hearing, REALTOR® Dean’s defense is that he honestly answered Bert’s question, because at the time, he had no knowledge about what was being built. All he knew was that other developers were planning an extensive shopping center somewhere in the general area, so he simply ventured a guess. REALTOR® Dean goes on to say that, as indicated in Buyer Bert’s testimony, he prefaced his response to Bert by saying he didn’t know the answer to Bert’s question.

Questions

1. Is REALTOR® Dean in violation of Article 2?
 - A. No, because he prefaced his response by clearly saying that he didn't know.
 - B. No, because Buyer Bert could have researched the new construction and zoning himself.
 - C. Yes, because REALTOR® Dean is obligated to discover and disclose adverse factors that are reasonably apparent to a licensed real estate professional.
 - D. Maybe, if the new construction was identified as a "non-material" fact in law or regulation.

2. How should REALTOR® Dean have responded when asked about the new construction?
 - A. Refer Bert to the developer.
 - B. Explain that although he didn't know the answer, he would research it and get back to Bert.
 - C. Say he didn't know the answer and leave it at that.
 - D. Advise Bert to wait and see if the construction is a shopping center or something else before submitting an offer.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

3. Article 12

- Be honest and truthful in real estate communications.
- Present a “true picture” in your advertising, marketing, and other representations.
- Ensure that your status as a real estate professional is readily apparent in your advertising, marketing, and other representations.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 12 Case Studies

Case #1 (Based on Case Interpretation #12-17)

A principal broker of Tech-friendly Realty, REALTOR® Bob is technologically savvy and constantly looking for ways to use the Internet to promote his firm and drive additional traffic to his website. Being an early adapter to the Internet he registered, but did not use, several domain names that incorporated or played on the names of many of his competitors and their firms, including Top Notch, REALTORS®.

REALTOR® Bob and his information technology vendor recently came to the conclusion that one way to drive traffic to Tech-friendly Realty's website is to take better advantage of the search engines commonly used by potential buyers and sellers. They determine that when potential buyers or sellers search on "real estate," "REALTORS®," or similar words, lists of related, registered domain names appear. So, REALTOR® Bob decides to activate some of the dormant domain names of his competitors, including the "topnotchREALTORS.com," and use them to point consumers to his own website.

In a matter of days, REALTOR® Bob learns that he had been charged with a violation of Article 12 of the Code of Ethics by the owner of Top Notch, REALTORS®, REALTOR® Sally, who alleges that REALTOR® Bob's use of the domain name "topnotchREALTORS.com" presents a false picture on the Internet to potential buyers and sellers.

During the hearing, REALTOR® Bob defends himself, by saying that in his opinion, using a domain name is not advertising or a representation to the public, but simply a convenient way for Internet users to find relevant Web sites. He goes on to say that, "When Web surfers reach my home page, there is no question, but that it's my site, because it clearly displays Tech-friendly Realty's name and status as a real estate firm." He goes on to say that, "These complaints are just a lot of sour grapes from dinosaurs who don't keep up with the times, and who don't realize that on the Internet, it's every man for himself."

Case #1 Questions

1. Which Standard of Practice applies to this situation?
 - A. Standard of Practice 12-9
 - B. Standard of Practice 12-10
 - C. Standard of Practice 12-11
 - D. Standard of Practice 12-12

2. Has REALTOR® Bob violated Article 12?
 - A. Yes.
 - B. No.
 - C. Only if using a domain name based on another firm's name is precluded by law or regulation.
 - D. It depends on the disclosures and any other information displayed on REALTOR® Bob's Web site.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 12 Case Studies

Case #2 (Based on Case Interpretation #12-19)

REALTOR® Owen spots a dilapidated “For Sale” sign on an otherwise attractive wooded lot. He gets out of his car to look closer at the sign, and is barely able to discern REALTOR® Sloan’s name, which he later uses to locate REALTOR® Sloan’s company website on the Internet.

Later, when he has a chance to view REALTOR® Sloan’s website, he sees detailed information about the lot. He sends an e-mail to REALTOR® Sloan, requesting lot dimensions and the property’s asking price. Several days later, he receives a response that simply says, “That listing expired.”

The day after receiving the e-mail from REALTOR® Sloan, REALTOR® Owen contacts another area broker, REALTOR® Caren, to see if the wooded lot is still available. REALTOR® Caren confirms her firm has had an exclusive listing on the property for the past six months. “That’s funny,” responds REALTOR® Owen, “REALTOR® Sloan has a ‘For Sale’ sign on the property and information about it on his website. I was under the impression he still has that listing.”

Although the lot was out of REALTOR® Owen’s price range, the “For Sale” sign and information on REALTOR® Sloan’s website stayed on his mind. Finally, he contacted the local association of REALTORS® and filed an ethics complaint alleging that REALTOR® Sloan’s “For Sale” sign and website information indicates that the property is listed with his firm, but this has not been the case for over six months. REALTOR® Owen writes that in his opinion, REALTOR® Sloan’s conduct violates Article 12, because it does not present a “true picture” in a public representation and is advertising a property without authority, practices both prohibited by Article 12, as interpreted by Standard of Practice 12-4.

During the professional standards hearing, REALTOR® Sloan claims that failing to remove the “For Sale” sign simply was an oversight, and if anyone is to blame, it is his personal assistant, Brenda, who is responsible for removing signs and lockboxes from expired and sold listings. He says, “If you want to blame anyone, blame her, since she’s supposed to bring back all of our ‘For Sale’ and ‘Sold’ signs.” REALTOR® Sloan acknowledges that the stale listing information on his Web site continued to appear for more than six months after the listing expired, and compares this to finding outdated property information in an old newspaper advertisement. “It’s possible,” he points out, “that someone might come across a six- month-old newspaper with my listings in it, and those ads were true when I ran them. How can I control when and where someone will come across old newspaper ads, months or even years later?”, he asks. “Besides,” he adds, “REALTORS® have better things to do than constantly monitor their websites to make sure that everything is absolutely, positively up-to-the-minute. If we did that, none of us would have time to list or sell,” he concludes.

Case #2 Questions

1. Is REALTOR® Sloan obligated to keep his company's listing information up to date on his firm's website?
 - A. Yes.
 - B. No.
 - C. Only if the same listing information does not also appear in a newspaper.

2. If he is obligated to keep his website current, then how long does REALTOR® Sloan have to remove outdated or expired property information from the website?
 - A. REALTORS®' websites must be immediately and continuously updated to avoid the inclusion of outdated and misleading information.
 - B. REALTORS® should use reasonable efforts to ensure information on their websites is current and accurate.
 - C. It depends on the multiple listing service's IDX and VOW Rules.
 - D. Both B and C.
 - E. REALTORS® are not obligated to update the information shown on their websites.

3. When he took the listing, REALTOR® Sloan received permission from the seller to post a sign on the property and to advertise it on his website. Such authority remains in effect even after the listing expires.
 - A. True
 - B. False

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

4. Article 17

- REALTORS® (principals) are required to arbitrate contractual and specific non-contractual disputes identified in Standard of Practice 17-4 that they have with REALTORS® (principals) in other firms.
- REALTORS®' clients may invoke mandatory arbitration with their REALTOR® (principal).
- REALTORS® are obligated to cause their firms to arbitrate.

Part 5: Summaries and Case Studies of Selected Articles of the Code of Ethics

Exercise: Article 17 Case Study (Based on Case Interpretation #17-1)

REALTORS® Linda and Amy participate in a cooperative transaction that results in a dispute over entitlement to compensation. Rather than request arbitration at the local association of REALTORS®, REALTOR® Linda instead files a lawsuit against REALTOR® Amy for the compensation she feels is owed to her. When REALTOR® Amy receives notification a lawsuit has been filed, she turns around and requests arbitration at the local association.

Because Linda and Amy are REALTOR® principals in different firms, the association's Grievance Committee classifies the arbitration as "mandatory" and schedules it for a hearing. REALTOR® Linda receives notice of the grievance committee's decision, but refuses to withdraw her lawsuit, so REALTOR® Amy then files an ethics complaint alleging that REALTOR® Amy has violated Article 17, as interpreted by Standard of Practice 17-1.

After receiving the complaint, the association schedules a hearing before the Board of Directors. During that hearing, REALTOR® Amy presents evidence that she sought REALTOR® Linda's agreement to submit the dispute to arbitration. REALTOR® Linda defends her actions by asserting that under state law, REALTOR® associations have no authority to bar her access to the courts, or to require her to arbitrate disputes with other REALTORS®.

The Board of Directors acknowledges that REALTOR® Linda is correct about her legal rights and about the association's inability to prevent her from filing a lawsuit. That said, the Board of Directors points out the association is a voluntary organization whose members agree to assume certain obligations with respect to their relations with other REALTORS®. The board advises Linda that if she wishes to continue as a REALTOR® member, she is obligated to adhere to the Code's duty to arbitrate, as established in Article 17.

Questions

1. Does filing litigation against another REALTOR® over a contractual dispute always lead to a violation of Article 17?
 - A. Yes.
 - B. No, because everyone is entitled to file litigation.
 - C. It depends on whether: (1) a request for arbitration has been filed, (2) the grievance committee determines the matter to be arbitrable and of a mandatory nature, and (3) a separate ethics complaint alleging a charge of Article 17 has been filed.
 - D. Arbitration always is voluntary.

2. REALTORS® may be relieved of their obligation to arbitrate through the local association of REALTORS® when:
 - A. a grievance committee or a hearing panel find the matter to be too legally complex or the amount involved to be too large or too small
 - B. both parties voluntarily choose to litigate, rather than arbitrate
 - C. the arbitration is classified as “voluntary” by a grievance committee
 - D. the request for arbitration is filed after the filing deadline
 - E. All of the above.

3. Is failing to pay an arbitration award always a violation of Article 17?
 - A. Yes.
 - B. Only if a pattern of arbitrarily refusing to pay arbitration awards is established.
 - C. Yes, depending on whether the arbitration is mandatory or voluntary.
 - D. No, arbitration awards must be enforced through the courts.

Part 6: Conclusion

The REALTOR® Code of Ethics:

- protects the buying and selling public and the general public
- promotes a competitive real estate market place
- enhances the integrity of our profession
- is **our** promise of performance
- is **our** promise of professionalism