

The REALTORS[®]' Code of Ethics

New Member
Orientation Program
Facilitator's Guide

Overview of This Course for The Facilitator

This course is based on instructional concepts designed to reach adult learners, grounded in the central principle that different people learn differently. The format and structure, then, depends on a variety of learning techniques to:

- a) reach different types of learners
- b) add variety and interest
- c) involve learners in participatory exercises to introduce concepts and have participants practice concepts introduced in other formats.

You will see the course includes short (emphasis on short!) lecturettes, group discussions and case studies. The participatory exercises can be used in a variety of ways. All are conducive to group work, but most can also be done individually with townhall feedback discussions.

This manual corresponds exactly to the content of the participant materials. Comments for facilitators appear on the left side pages and participant materials on the right-side pages. Participants will have only the right-side pages which should be numbered in the same sequence as the facilitator's guide. You can use this facilitator guide as a reference to the answers to the participatory exercises and as a guide to the concepts discussed in the participant materials. You may also want an exact copy of the participant materials with you at all times in the class, so you can be familiar with the format of the participant materials.

The PowerPoint presentation is numbered in the bottom left corner to correspond to the participant materials and instructor's guide.

This course is designed for 3 hours of instruction to meet standards for continuing education credit in many states. In addition to three hours of instruction, two short breaks, not more than fifteen minutes each, may be appropriate. If you find that there is too much material to be presented in 3 hours or if you choose to present the material in the NAR minimum instructional time of 2.5 hours, you may use some of the exercises as subsequent "reference" tools. If you use this technique, we suggest you give the participants the answers to the "reference" exercises so that they can understand the exercises on their own. A chart reflecting approximate time to be spent on each section appears in Appendix A. The approximate time is also noted in each section for the facilitator.

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Learning Objectives

As the course facilitator, you should be familiar with its learning objectives. You may choose to share some or all of the learning objectives with the class.

Upon completion of the New Member Orientation program, participants will be able to:

1. Briefly describe the history of the Code of Ethics as it relates to the Code's origins, its influence on real estate license laws, and establishment of arbitration as the monetary dispute resolution process between REALTORS®.
2. Identify concepts in the Preamble to the Code of Ethics, including the wide distribution of land ownership, highest and best use of the land, principles of competency, fairness and high integrity, and the concept of adherence to the Code regardless of any inducement of profit and/or instruction from clients.
3. Identify the Golden Rule as one of the foundations upon which the Code of Ethics is built.
4. List the major categories of Articles in the Code (Duties to Clients and Customers, Duties to the Public and Duties to REALTORS®).
5. Describe the structure of the Code and its supporting materials (Articles, Standards of Practice and Case Interpretations).
6. List Articles of the Code which are commonly the subject of complaints.
7. Describe the concepts of these commonly cited Articles of the Code, including Articles 1, 2, 9, 12, and 16.
8. Given case studies, fact scenarios or similar interactive learning methods, identify possible violations of the Code of Ethics, specifically related to the commonly cited Articles.
9. Describe the professional standards enforcement process of the board or association, including the distinction between an ethics complaint and an arbitration request, and the differences between the Grievance Committee and the Professional Standards/Arbitration Committees.
10. Briefly describe the bases upon which a procuring cause arbitration claim is decided.

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Icebreaker Exercise

Suggested Time: 10 minutes for group work; 10 minutes for feedback

Start Time: _____ End Time: _____

An “icebreaker” exercise is an excellent tool to accomplish two objectives. One, it gets participants involved and talking to each other very early in the class. Two, it introduces the participants to the concepts discussed in the material quickly. You should emphasize that this is not a “graded” exercise and that it is meant to familiarize participants with concepts that will be discussed in the class. Watch participant progress in the groups. The group work will take about 10 minutes, depending on how quickly the group gets to work.

After the group work is completed, use a townhall format to elicit feedback about “What are ethics?”

Some likely “answers” may be:

“Doing the right thing.”

“Standards of conduct”

“Morals”

“Right and wrong”

“Honesty”

“Integrity”

You should affirmatively validate answers and comments of this nature. You might summarize the exercise by talking about different standards of conduct which exist in our society. These include:

1. Law
2. Religion
3. Philosophies
4. Morals or personal beliefs
5. Professional and industry codes and standards (The REALTORS® Code of Ethics is in this category.)

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Icebreaker Exercise

The instructor will tell you how to form groups. In your group, you should:

1. Introduce yourselves if you do not already know each other.
2. Select a spokesperson.
3. Answer this question: What are “ethics?” Consider the question in all facets of life and business, not just the real estate business. Use the space below to record your notes and observations.

What are “ethics?”

1.

2.

3.

4.

5.

NOTES

Part 1: History and Background of the Code of Ethics

Suggested Time: 10 minutes

Start time: _____ End time: _____

This section summarizes the history and background of the Code of Ethics. A short lecturette is a good delivery method. Use the slides accompanying this part. The content with these points is summarized below.

The National Association of REALTORS® was formed in 1908 and the Code of Ethics was adopted in 1913. The purpose of the Code was to establish a professional standard of conduct for real estate practitioners. Before this time, the real estate business had a history of speculation, exploitation, and disorder. This was before the establishment of state regulatory licensing agencies and consumer advocacy. It was a time when real estate practitioners, if they were licensed at all, were licensed as peddlers. It was an era of robber barons whose motto was “let the public be damned.”

The REALTORS® Code of Ethics is based on the concept of “let the public be served.” This central concept of protection of the public is one of the foundations of the Articles of the Code.

The National Association of REALTORS® was one of the first business groups to adopt a code of ethics.

Later, when real estate license laws were established, many were based on the standards set in the REALTORS® Code of Ethics.

To this day, many judicial decisions cite the REALTOR® Code of Ethics as the standard of conduct in the real estate industry. Courts have applied the standards of conduct embodied in the Code of Ethics to real estate licensees who are not REALTORS®.

Similarly, the use of arbitration in monetary disputes between REALTORS® was a pioneering effort. While “alternative dispute resolution” systems such as arbitration and mediation are used in the civil law system more frequently today, the requirement that REALTORS® arbitrate monetary disputes between fellow REALTORS® has been in effect since the inception of the Code of Ethics over 100 years ago.

NOTES

Part 1: History and Background of the Code of Ethics

- National Association of REALTORS® formed in 1908.
- No license laws at the time.
- Real estate industry had a history of speculation, exploitation, and disorder.
- Code of Ethics was adopted in 1913 to establish a professional standard of conduct.
- Code of Ethics formed the basis for license laws.
- From its inception, the Code of Ethics required arbitration of monetary disputes between REALTORS®.

NOTES

Part 2: The Preamble and Structure of the Code of Ethics

Suggested Time: Preamble: 10 minutes Start time: _____ End time: _____

A short lecturette covering this material, along with use of slides is the suggested presentation method.

The Preamble to the Code of Ethics is the aspirational foundation of the Code of Ethics. While the concepts in the Preamble do not serve as the basis for disciplinary action against a REALTOR®, they are timeless principles upon which the professionalism of the industry is based.

Every REALTOR® makes a personal commitment to uphold the Code of Ethics. The Code defines high standards of ethical conduct for our industry. The Code, in fact, defines professionalism. The REALTOR® Code of Ethics is based on the overall concept of service to the public. It embodies the values of honesty, integrity, fair dealing, and competency. The Code also protects practitioners. If practitioners follow the Code, they will minimize their legal liabilities.

The concepts embodied in the Preamble are shown as bullet points in the participant materials. It is not intended that every item be discussed in detail. You should pick at least three or four important concepts to point out to participants. Many of the concepts are self-explanatory. Comments on certain concepts follow.

“Under all is the land ...”: This powerfully descriptive beginning to the Preamble to the Code sets the stage for all that follows. The phrase clearly conveys the immense and all-encompassing nature of real estate and the real estate calling. Land is the foundation of many aspects of society, whether it be the basics of food and shelter, or the more sophisticated aspects of economy and prosperity. Truly, REALTORS® deal in one of society’s most important “commodities”.

“Widely allocated ownership” and “widest distribution of land ownership”: The Preamble uses these phrases in terms of the “survival and growth of free institutions and of our civilization” and that “the interests of the nations and its citizens require ... the widest distribution of land ownership.” These concepts in the Preamble speak to a fundamental premise upon which our nation was founded. Given that much of our law and governance derived from England, under which the king held much of the available land, it is easy to see why the founders of our nation would have a desire not to have a few individuals own vast quantities of land. The accumulation of land can lead to inordinate power in the hands of a few. REALTORS® support the fundamental concept that many persons owning small parcels of land is vital to the efficient functioning of our democracy.

Several of the Preamble’s concepts in the bullet points relate to the concept of the protecting the integrity of the profession. Aspirations to “maintain and improve the standards of their calling,” “strive to become and remain informed on issues affecting real estate,” “identify and take steps to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession” as well as the concept of sharing “with fellow REALTORS® a common responsibility for the integrity and honor of the real estate businesses all speak to the common obligations that REALTORS® have in looking for the wider implications of their individual conduct in the daily practice of the real estate business.

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Part 2: The Preamble and Structure of the Code of Ethics

- I. Aspirational Concepts of the Preamble of the Code of Ethics
 - A. Under all is the land ...
 - B. The Golden Rule.
 - C. “Widely allocated ownership” and “widest distribution of land ownership”
 - D. Maintain and improve the standards of their calling.
 - E. Share with fellow REALTORS® a common responsibility for the integrity and honor of the real estate profession.
 - F. Strive to become and remain informed on issues affecting real estate.
 - G. Willingly share the fruit of your experience and study with others.
 - H. Identify and take steps to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession.
 - I. Urge exclusive representation of clients.
 - J. Do not attempt to gain any unfair advantage over competitors.
 - K. Refrain from making unsolicited comments about other practitioners.
 - L. If an opinion is sought about a competitor (or the REALTOR® believes comment is necessary), the opinion should be offered in an objective, professional manner.
 - M. The term REALTOR® stands for competency, fairness, high integrity, moral conduct in business relations.
 - N. No inducement of profit and no instruction from clients can justify departure from these ideals.

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“Competency, fairness, high integrity ...”: These words should be highlighted as watchwords of professional conduct under the Code of Ethics.

“No inducement of profit and no instruction from clients ...”: Note that this powerful principle follows directly the words of “competence, fairness and high integrity.” This entire paragraph summarizes, in a nutshell, the critical concepts of the Code of Ethics.

Business Ethics

Suggested Time: 5 minutes Start time: _____ End time: _____

This short lecturette about business ethics should give the participants a sense of how the REALTOR® Code of Ethics fits into the overall picture of ethics in industry. You should simply discuss the fact that business ethics can be made up of industry codes, such as the REALTOR® Code of Ethics, or have a more general concept which would include both company policy and individual moral values. Legal standards generally set minimum standards of conduct. Ethical standards usually encompass principles higher than legal standards.

Structure of the Code of Ethics

Suggested Time: 5 minutes Start time: _____ End time: _____

For new members, it is particularly important to be able to “navigate” the Code of Ethics and to understand the Code’s format. This module uses a short lecturette to introduce the structure of the Code. You may want to ask participants to have their copy of the Code available. You can then use the Code as a “prop” when you discuss this material with participants.

This section moves from the broadest concepts in the Code to the most specific. The first part deals with the “three major categories.” You may want to point out that the Code is prioritized as to the importance of the sections, Articles and Standards of Practice. The National Association structured the Code with “Duties to Clients and Customers” as the first section because these duties are the most important obligations REALTORS® have. Similarly, the Articles in subsequent sections are prioritized. For example, Article 1’s concept of protecting and promoting the interests of the client is considered to be the most important obligation REALTORS® have, both in this section and, because it is the first Article, in the entire Code. The same prioritization occurs in the Standards of Practice that interpret each Article.

Even though this priority exists, it is important to note that no section, Article or Standard of Practice is “less important” or the “least important.” Violations of any are serious and can subject the member to discipline.

Lastly, you should note that, in contrast to a failure to attain the aspirational goals of the Preamble, violation of any of the Articles can subject REALTORS® to disciplinary action. The types of discipline will be reviewed later in the course.

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II. "Business ethics"

A. What are "business ethics?"

1. Industry codes
2. Company policies
3. Individual moral values

B. Business ethics and legal standards

C. 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 (e.g. legal ethics, USPAP, NAA Code, the code of the NAR Institutes, Societies, and Councils, etc.) but the one duty every REALTOR® has in common is their adherence to the REALTORS® Code of Ethics.

III. The Structure of the Code of Ethics

A. The three major sections

1. Duties to Clients and Customers
2. Duties to the Public
3. Duties to REALTORS®

B. Articles – broad statements of ethical principles.

D. Standards of Practice – support, interpret, and amplify the Articles under which they are stated.

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

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

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Pathways to Professionalism

Suggested Time: 5 minutes Start time: _____ End time: _____

This short lecturette should explain the differences between the objective/enforceable/ethical standards in the Code of Ethics and the voluntary/courtesy/etiquette guidelines provided in the Pathways to Professionalism. You should also explain that Pathways is not a complete list and that it can be supplemented with local customs and practices.

Pathways to Professionalism Exercise

Suggested Time: 5 minutes for group work; 5 minutes for feedback

Start time: _____ End time: _____

Breaking everyone into groups (the same or different groups from the first exercise) provide everyone a copy of the Pathways to Professionalism. Ask each group to identify three areas that relate to their market. You might also ask if there are any local customs or practices that are not included.

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III. Pathways to Professionalism – list of service criteria for the industry and professional courtesies for use by REALTORS® on a voluntary basis.

A. The three major sections

1. Respect for the public
2. Respect for property
3. Respect for peers

Pathways to Professionalism Exercise:

The instructor will break everyone into groups. You will be given a copy of Pathways to Professionalism and asked to identify the three areas that relate to your market. A spokesperson for the group will summarize the discussion.

NOTES

Part 3: Enforcement of the Code of Ethics

Suggested Time: 15 minutes

Start time: _____ End time: _____

While the primary focus of the Orientation course is not on enforcement procedures, members should know that the Code of Ethics has an enforcement mechanism and that local boards and associations have a duty to enforce the Code. Members should also know the basic concepts of how the Code is enforced.

This module should be handled briefly. The key concepts in the material are self-explanatory. Specific points to address are listed in the comments below.

Ethics Cases and Arbitration Cases

New members should realize that local boards and associations resolve two types of cases, ethics complaints and arbitration requests. Ethics complaints might be described as “conduct” cases dealing with a possible violation of the Code of Ethics. Arbitration cases might be described as “money” cases in which disputed commissions between REALTORS® (generally in different firms) are handled. You should point out that most cases dealing with commission disputes between REALTORS® with different firms are required to be arbitrated rather than litigated if any party requests arbitration.

The Ethics Enforcement Process

Who can file an ethics complaint? The answer is, of course, anyone, whether a member, a buyer, seller or other member of the public.

The balance of this section dealing with the Grievance Committee and Professional Standards hearing panel is self-explanatory. Briefly walk through the “two-step” process of Code enforcement described here.

NOTES

Part 3: Enforcement of the Code of Ethics

I. Ethics Cases and Arbitration Cases

- A. Ethics - Basic Issue - Is there a possible violation of the Code of Ethics?
- B. Arbitration - Basic Issue - Is there an arbitrable issue, that is, a money dispute (typically a dispute over which REALTOR® is entitled to the cooperative commission in a transaction)?

II. The Ethics Enforcement Process

- A. Filing a Complaint - Who can file a complaint?
- B. The Grievance Committee
 - 1. A screening committee comprised of members of the Association appointed to the committee.
 - 2. Key question for the Grievance Committee is: “If the allegations in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred?”
- C. The Professional Standards Hearing Panel
 - 1. Function is to conduct a full “due process” hearing with sworn testimony, witnesses and evidence.
 - 2. Hearing panel is comprised of members of the Professional Standards Committee.
 - 3. After conducting a hearing, the hearing panel decides whether there was a violation of the Code of Ethics, proven by clear, strong and convincing proof.
 - 4. If the hearing panel finds a violation of the Code of Ethics, the panel then determines the discipline to be imposed on the violator (respondent).

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Types of Discipline and Costs

The most important issue in this section is that the authorized disciplinary actions are the only sanctions that may be imposed for violations of the Code. Panels may not impose a sanction not included on this list. You should briefly walk through the list of disciplinary actions. Note that the last item, regarding the administrative processing fee, is not discipline and is used only if the association has a policy which imposes the administrative processing fee in all cases where a violation of the Code is found.

The Arbitration Process

Spend a few minutes discussing arbitration as defined in Article 17 of the Code. Note that arbitration of disputes is limited to circumstances falling within the parameters of Article 17. For example, damages in an automobile accident would not be an arbitrable matter simply because two REALTORS® were involved in an accident. This type of claim is not “arising out of their relationship as REALTORS®.”

You should note that the Grievance Committee determines arbitrability when it reviews an arbitration request.

NOTES

D. Authorized Discipline and Administrative Processing Fees

1. Letter of Warning
2. Letter of Reprimand
3. Education
4. Fine not to exceed \$15,000
5. Probation for one year or less
6. Suspension for not less than 30 days nor more than one year
7. Expulsion from membership for period of one to three years
8. Suspension or termination of MLS privileges.
9. Cease or refrain or take steps to ensure Code compliance

Note: An administrative processing fee (if found in violation) is not to exceed \$500 (“court costs”). An administrative processing fee is not considered discipline. It is charged as part of the association’s adopted policy for enforcing the Code of Ethics. This is not to be used on a case-by-case basis, but rather as an overall policy of the association.

III. The Arbitration Process

A. Request filed.

1. Arbitration is conducted under Article 17 of the Code of Ethics and the state arbitration statute (if any).
2. Article 17 provides that arbitration occurs under the following circumstances:
 - a. Contractual disputes or specific non-contractual disputes (see Standard of Practice 17-4);
 - b. Between REALTORS® (principals) associated with different firms;
 - c. Arising out of their relationship as REALTORS®

B. Grievance Committee

1. Committee performs a screening function similar to review of ethics complaints.
2. Key question for the Grievance Committee is: “If the allegations in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e. is there some basis on which an award could be based?”

NOTES

Briefly describe the concept of mediation and review the outline material with the class. You might note that all Boards and Associations have been required to provide mediation services to their members since January 1, 2002. Explain that mediation is the preferred dispute resolution system of the NATIONAL ASSOCIATION OF REALTORS®. Review the differences between mediation and arbitration. Identify the additional reading materials about mediation.

Review the Professional Standards hearing panel material as you did with in the Code of Ethics section.

Lastly, note that in the event an arbitration award is not voluntarily paid, the arbitration award can be enforced through judicial processes. The non-prevailing party must, within 10 days of the award being transmitted, either pay the award or deposit a like amount with the association.

NOTES

C. Mediation

1. A voluntary process in which disputing parties meet with a mediator appointed by the Association to create a mutually acceptable resolution of the dispute, rather than having a decision imposed by an arbitration hearing panel.
2. Mediation can occur before or after the Grievance Committee reviews requests for arbitration, depending on local Association policy.
3. If a dispute is resolved in mediation, the parties sign an agreement spelling out the terms of the settlement, and no arbitration hearing is held.
4. Comparison of mediation and arbitration

Mediation	Arbitration
Low-cost	Moderate cost
Little delay	Moderate delay
Maximum range – solutions	Win/lose/split
Parties control outcome	Arbitrators control outcome
Uncertain closure	Definite closure
Maintain/improve relationship	May harm relationship

D. Additional reading about mediation:

1. “No losers in Mediation”
2. “Win/win Solution”

F. Professional Standards hearing panel

1. Function is to conduct a full “due process” hearing with sworn testimony, counsel, witnesses and documentary evidence.
2. Hearing panel consists of members of the Professional Standards Committee.
3. After the hearing, the hearing panel decides which REALTOR® is entitled to the award (typically a disputed commission in a transaction), proven by a preponderance of the evidence.

G. Payment of the Award - Generally, the award of the panel in an arbitration case can be judicially enforced if not paid by the non-prevailing party. The non-prevailing party must, within 10 days of the award being transmitted, either pay the award or deposit a like amount with the association.

NOTES

Part 4: Concepts of Procuring Cause in Arbitration

Suggested Time: 10 minutes

Start time: _____ End time: _____

Following the section on procedural matters in arbitration cases, this section deals with the substantive matters of an arbitration hearing.

This section is a simple introduction to procuring cause concepts. The objective of the facilitator should be to create an awareness by participants that there are guidelines which address commission disputes, and to make the participants aware where to find the guidelines. In addition, central fundamental concepts arbitration is noted.

NAR's Arbitration Guidelines

Make the participants aware that guidelines for determining procuring cause exist. The participant materials will include Appendix II to Part Ten, Arbitration Guidelines. Direct participants to this information as reference material for later use.

Key Factors in a Procuring Cause Dispute

Briefly review these four items as guiding principles in a procuring cause dispute. You may finish the section with a brief discussion of the definition of procuring cause from Black's Law Dictionary. Note that REALTOR® guidelines governing procuring cause disputes are similar to and based on this legal definition, but are more extensive and tailored to typical situations found in broker to broker disputes (as opposed to broker versus owner disputes typically the subject of litigation).

NOTES

Part 4: Concepts of Procuring Cause in Arbitration

I. NAR's Arbitration Guidelines

- A. Found in *the Code of Ethics and Arbitration Manual*.
- B. Guidance to hearing panels as to how to determine procuring cause in arbitration hearings.
- C. Also referred to as "Suggested Factors for Consideration by a Hearing Panel in Arbitration."
- D. Guidelines focus on "procuring cause" as the basis for resolving some commission disputes between brokers.

II. Key Factors in a Procuring Cause Dispute

- A. No predetermined rule of entitlement may be established by an association.
- B. Hearing panels should consider the entire course of events.
- C. Matters such as the first showing of the property, the writing of the successful offer or the existence of an agency relationship with the buyer are not, in themselves, exclusive determiners of procuring cause/entitlement.
- D. The key concepts of procuring cause are referenced in this definition from Black's Law Dictionary, Fifth Edition:

The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object.

- E. Or, as the Arkansas Supreme Court put it:

It's not the squirrel that gathers the nuts, but the one who shakes the tree.
(who is entitled to be paid)

NOTES

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

Article 1

Suggested Time: 5 minutes Start time: _____ End time: _____

The first three points summarize the central concepts of Article 1. Standard of Practice 1-2 is mentioned because it defines various terms used in the Code. In addition, you may want to specifically note this Standard of Practice because it establishes the concept that the Code applies to all types of agency and non-agency relationships recognized by law.

After a brief summary (use of slides is recommended), introduce the case study. Have the participants work in groups of 3 to 6 for the case studies similar to the icebreaker exercise. Depending on the time available, you can process the feedback from the groups through a spokesperson from several groups, or in a townhall format. If time is short, the townhall format is recommended. In each of the Articles studied, this same approach applies. The “answers” to the questions which follow the cases are noted by case. Where an actual Case Interpretation is used, the number of the Case Interpretation is noted. As a reference for facilitators, the appropriate Case Interpretations are included in Appendix B to the facilitator guide. The participants do not have copies of the Case Interpretations.

Case Study – Article 1

Suggested Time: 15 minutes Start time: _____ End time: _____

What should you say to Tanya?

Whatever you say, you must be careful not to compromise your relationship with the client. For example, you cannot say, “Yes, it’s high, but I’m sure he’ll come down soon.” You should simply discuss the amenities of the property and the listed price. You should not offer your feelings or opinions about the price. This approach is likely the same, whether you are in an agency relationship or non-agency relationship. However, if you are working in a non-agency relationship, you should check state laws for any variation from this approach.

When you listed the K’s home at \$150,000, were you in violation of the Code?

No. Because you honestly told the sellers what you believed the property’s fair market value was.

NOTES

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

- I. Article 1
 - A. Protect and promote the interests of the client;
 - B. This obligation to the client is primary;
 - C. But must treat all parties honestly, regardless of agency or non-agency relationship.
- A. Standard of Practice 1-2 defines terms such as “client,” “customer,” “agent,” and “broker.”

Case Study

Your community has been hit hard by a downturn in the economy. There have been many layoffs at the local factory and property values have decreased. You've been talking with George and Melanie K. about listing their house. George is stuck on the figure of \$150,000. You've explained that nothing in their area has ever sold for more than \$130,000 -- and that was more than a year ago. But he doesn't want to hear that. It's a good home. You know if it was priced right -- at fair market value -- you could sell it. In the meantime, George has talked to other firms. In fact, licensee Denny H. at XYZ Realty (a different company than yours) offered to list it at \$150,000. But George came back to you because you were referred by his golf partner. You decide to list it. Yesterday, you got a call from REALTOR® Tanya P. She asks, "What's it got? -- a tennis court? -- a swimming pool? I mean, nothing's ever sold in that area for more than \$125,000 -- maybe \$130,000 ... "You're not sure what to say.

What should you say to Tanya?

When you listed the K's home at \$150,000, were you in violation of the Code?

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Suppose the home is sold for \$150,000 to someone who is working with another company's licensee and that buyer is just transferring into town. Later, that buyer realizes that the price she paid was \$20,000 more than what any other property in the area had sold for. Would your failure to disclose to the buyer or her licensee the fact that no other property had sold for more than \$130,000 be a violation of the Code?

No. Your duty is to promote your client's best interests. Your obligation to be honest with a customer does not permit nor require you to suggest that your client's property may be priced in excess of market value. If the customer wants information upon which to base a purchasing decision, you could suggest they review comparable sales or seek independent advice. In addition, under most state laws, the pricing of property is not generally considered to be a material fact which would require disclosure. Many states consider pricing or statements of value to be opinions rather than facts. Reference to specific state law or regulation may be required.

NOTES

Suppose the home is sold for \$150,000 to someone who is working with another company's licensee and that buyer is just transferring into town. Later, that buyer realizes that the price she paid was \$20,000 more than what any other property in the area had sold for. Would your failure to disclose to the buyer or her licensee the fact that no other property had sold for more than \$130,000 be a violation of the Code?

NOTES

Article 2

Suggested Time: 10 minutes Start time: _____ End time: _____

Article 2 might be called the “disclosure” article. Note that the first bullet point talks about avoiding exaggeration, misrepresentation and concealment of pertinent facts about the property OR the transaction. In other words, Article 2 requires more than simply the disclosure of property defects.

The second bullet point should be used to discuss the fact that REALTORS® are not required to be “experts” in every possible aspect of real estate transactions. For example, Article 2 makes it clear that REALTORS® may not be home inspectors, termite inspectors, professional engineers, architects, accountants, attorneys or the like. These areas would generally be considered to be outside the scope of a typical real estate licensee’s expertise and not required by the licensing statute. However, you should also note that REALTORS® have an obligation to be aware of conditions and matters which a typical real estate licensee in the state or locality would know. In other words, a REALTOR® cannot ignore a condition of which he or she is aware simply because the REALTOR® believes that a home inspector will also note the condition. REALTORS® should make the appropriate disclosures to the appropriate parties of the information which the REALTOR® is aware at the time. Note also that Article 2 does not require the discovery of “latent” defects. You should mention to the participants that a working synonym of “latent” is “hidden.”

Case Study – Article 2

Suggested Time: 15 minutes Start time: _____ End time: _____

How does Article 2 apply to this case?

Article 2 applies in this case because the facts represented involved a nearby development which could affect the value and desirability of the subject property.

Is Bob in violation of the Code?

Yes. This fact scenario is based on Case Interpretation #2-7. See the answers to the next questions for further rationale.

NOTES

II. Article 2

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

Case Study

REALTOR® Bob, a home builder, showed one of his newly constructed homes to Sheila and Tom J. In discussions about the home and the area, Sheila observed that some kind of construction was beginning nearby. She asked Bob what it was. Bob said, "I really don't know, but I believe it's a new shopping center that has been planned for the area." Sheila and Tom proceeded to purchase the home. Sometime after the closing, Sheila and Tom learned that the new construction was to be a bottling plant and that the adjacent area was zoned industrial.

Sheila and Tom were very upset and contacted Bob about their dissatisfaction. Bob's response was that he had given them an honest answer at the time and that he has no positive knowledge about the new construction. He told them that he knew that the shopping center was going up in the area and had simply ventured a guess that the construction they had observed was the shopping center. Bob further explained that he told them up front that he "didn't know."

Sheila and Tom were not satisfied with this explanation and have filed an ethics complaint against Bob with the local association of REALTORS®.

How does Article 2 apply to this case?

Is Bob in violation of the Code?

NOTES

What was Bob's obligation to Sheila and Tom?

Bob's obligation to Sheila and Tom was to be accurate in conveying the information about the nearby development. The fact that Bob prefaced his remarks with "I don't know ..." was not sufficient to vindicate Bob because he then proceeded to give Sheila and Tom information upon which they were justified in relying.

Were there better ways for Bob to have responded to Sheila's question? If so, how should Bob have responded?

Yes, there was a better way for Bob to respond. Bob should have known the answer or, if he didn't know, he should not have ventured a guess. If Bob stated that "he didn't know", he should not have continued to give information, or he should have offered to get the correct information. A response of "I don't know" alone would be sufficient. Likewise, a response such as "I don't know, but I will find out and get back to you" would also be appropriate.

NOTES

What was Bob's obligation to Sheila and Tom?

Were there better ways for Bob to have responded to Sheila's question? If so, how should Bob have responded?

NOTES

Article 9

Suggested Time: 5 minutes Start time: _____ End time: _____

Four short words paraphrase this Article: “Get it in writing!” It could be said that Article 9 is easy to understand but it could also be said that it is easy to violate! While the concepts of Article 9 are not difficult, those concepts are specific directions regarding written agreements that can be overlooked in the complexity of a transaction.

For example, the requirement of a copy of each agreement being given upon the signing or initialing can be overlooked. It is not uncommon to have an agreement signed and then return to the office with the original(s) with the promise that the REALTOR® will send parties copies as soon as he or she can get to a copy machine.

In addition, Standard of Practice 9-1 is noted because it is easy to overlook a written extension or amendment. The case study explores these issues in detail.

Case Study – Article 9

Suggested Time: 15 minutes Start time: _____ End time: _____

Is Jake in violation of the Code?

Yes. Jake failed to have the corrected listing agreement initialed by June, the seller of the property. In addition, he failed to give June a copy of the corrected listing agreement. Some participants might comment that the scenario describes a minor or typographical error. While this appears to be true in that the “error” is in one digit of the street address, that simple typographical error literally describes a different property from the one June owns and is selling. Clearly, it is extremely important for Jake to have authority to sell the correct property. If the listing agreement is for 5778 Sunset, he has not listed the correct property. In each of these questions, the listing agreement and its changes must also be properly initialed by the person in Jake’s company with authority to execute listing agreements.

What was Jake's obligation to June?

Jake had the obligation to have June initial the correction to the address in the listing agreement and the obligation to give June a copy of the corrected listing agreement.

What should Jake have done when he noticed the incorrect information?

He should have taken the original listing agreement back to June, had the change properly initialed, and given June a copy of the corrected listing agreement upon June's initialing of the correction. Alternatively, he could have used an amendment form to make the correction, had June sign the amendment form, and provided her with a copy.

NOTES

III. Article 9

- A. Agreements shall be in writing whenever possible;
- B. In clear and understandable language;
- C. Expressing the specific terms, conditions, obligations and commitments of the parties.
- B. A copy of each agreement shall be furnished to each party upon their signing or initialing.
- F. Standard of Practice 9-1 requires that reasonable care be used to keep documents current by use of written extensions and amendments.

Case Study

Jake, a licensee with Smith Realty, entered into a listing agreement with June to sell her property at 5678 Sunset Lane. At the house, he gave June a copy of the completed listing agreement. After he got back to the office, he noticed that the street address was listed on the agreement as 5778 Sunset Lane. He corrected the error before turning the listing agreement over to his broker.

Is Jake in violation of the Code?

What was Jake's obligation to June?

What should Jake have done when he noticed the incorrect information?

NOTES

Article 12

Suggested Time: 5 minutes Start time: _____ End time: _____

Article 12 is the REALTOR® version of “truth in advertising.” Article 12 mandates that REALTORS® be honest and truthful in all real estate communications, including a “true picture” in advertising, marketing, and other representations. It also requires REALTORS® to make sure the public is on notice and understands that all communications from a REALTOR®, including advertising, marketing, and other representations, are from a real estate professional. Note Standard of Practice 12-7 for participants’ later reference. This Standard of Practice describes the proper use of the word “sold” in the advertising and representations of REALTORS®. Also, draw attention to Standards of Practice 12-8 through 12-12 as they relate to Article 12’s applicability to the Internet.

Bullet point C notes the concept which will be reviewed in the case study.

Case Study – Article 12

Suggested Time: 10 minutes Start time: _____ End time: _____

How does Article 12 apply to this case?

This fact scenario is based on Case Interpretation #12-1. The last sentence of the Article applies: “REALTORS® shall also ensure that their professional status (e.g. broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising.”

In addition, Standard of Practice 12-5 applies: “REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise listed property without disclosing the name of the firm.”

Is Jill and/or Sandy in violation of the Code?

Yes. Both Jill and Sandy are in violation based on the part of Article 12 and as Article 12 is further interpreted by Standard of Practice 12-5 (quoted above).

Also note that state license laws and/or rules and regulations may prohibit such advertising as well. Such ads are sometimes called “blind” ads and are specifically prohibited under some state licensing laws and/or rules and regulations.

NOTES

- IV. Article 12
 - A. Be honest and truthful in real estate communications.
 - B. Present a “true picture” in your advertising, marketing, and other representations.
 - C. Ensure that status as real estate professionals are readily apparent in advertising, marketing, and other representations.
 - D. Recipients of all real estate communications must be notified that those communications are from a real estate professional.

Case Study

Everyday REALTOR® Jack R. passed the vacant lot and often wondered why no one was developing anything there. It was an excellent location. He had always meant to follow up -- but forgot about it as soon as the lot was out of sight. But here was his chance. A “for sale” sign had appeared. It showed what appeared to be a residential phone number -- and nothing else. What an opportunity! He jotted down the number and hurried to his office.

As soon as he sat down, he called the number. To his surprise, a familiar voice answered. It was Jill A., a REALTOR® he knew. She told him that her broker, Sandy G., had an exclusive on the property and had asked Jill to use her personal telephone number on the sign.

Jack thanked her for the information and hung up. He wondered what to do now ...

How does Article 12 apply to this case?

Is Jill and/or Sandy in violation of the Code?

NOTES

Article 16

Suggested Time: 10 minutes Start time: _____ End time: _____

Article 16 is a relatively short Article but is interpreted by many Standards of Practice. Note for participants that Article 16 applies to both agency and non-agency relationships. The Article uses the words “exclusive representation or exclusive brokerage relationship agreements” to include REALTORS® in those states having adopted non-agency relationships (e.g. transaction broker, transaction licensee, facilitator, etc.).

In order to summarize the types of issues which the Standards of Practice to Article 16 cover, use the list in the materials. While you should not dwell on any one of these, mention each to give participants an idea of the many different issues addressed by Article 16.

Example Standards of Practice which apply to each of these issues are noted here for you. Participants do not have this reference list. The abbreviation “SOP” stands for “Standard of Practice.”

Examples of issues covered by Article 16 and its Standards of Practice

1. Innovative or aggressive business practices SOP 16-1
2. Advertising solicitations of agency or other relationships SOP 16-2
3. Solicitation of listings and agency relationships of clients of other brokers
SOP's 16-4, 16-5, 16-6, 16-7, 16-8
4. Dealing with other brokers' clients SOP 16-13
5. Obligations when entering into exclusive relationships SOP's 16-9, 16-14
6. Agency and/or brokerage relationship disclosure SOP's 16-10, 16-11, 16-12
7. Compensation SOPs 16-15, 16-16, 16-17, 16-18, 16-19, 16-20

Case Study – Article 16

Suggested Time: 10 minutes Start time: _____ End time: _____

What Standard of Practice under Article 16 applies to this case?

Standard of Practice 16-2.

Is Don in violation of the Code? Why or why not?

No, Don is not in violation of the Code under Standard of Practice 16-2. Because Don's promotion was a general mailing to all homeowners in a given area (in this case, in a particular subdivision), it is not a violation of Article 16 as interpreted by Standard of Practice 16-2.

You may note that the alleged violation is a violation of the Article and not the Standard of Practice. Violations of the Code are violations of the Articles of the Code. The Standards of Practice interpret and support the Article with which they are associated. If there were a violation, the violation would be one of Article 16.

NOTES

V. Article 16

- A. Do not engage in any practice or take any action inconsistent with the agency or other exclusive relationship that other REALTORS® have with clients.

- B. Examples of issues covered by Article 16 and its Standards of Practice
 - 1. Innovative or aggressive business practices
 - 2. Advertising/solicitations which may be received by other REALTORS® clients
 - 3. Solicitation of listings and agency relationships of clients of other brokers
 - 4. Dealing with other brokers' clients
 - 5. Obligations when entering into exclusive relationships
 - 6. Agency and/or brokerage relationship disclosure
 - 7. Compensation

Case Study

It was a slow summer, so Don decided to initiate an aggressive marketing campaign to build sales. A key part of his new campaign was direct mail advertising. Don obtained a mailing list that included every home in the Cedar Creek (a large subdivision).

Within Cedar Creek were a number of homes for sale that were listed with other brokers. After Don's mailing goes out, several of those brokers filed an ethics complaint against him.

What Standard of Practice under Article 16 applies to this case?

Is Don in violation of the Code? Why or why not?

NOTES

Part 6: Wrap-up and Conclusion

Suggested Time: 5 minutes

Start time: _____

End time: _____

Conclude by summarizing the points on the opposite page from participants' materials. Use the slide provided.

Note that there are many Articles of the Code that have not been covered due to time limitations. Encourage the participants to read the entire Code on their own and familiarize themselves with all 17 Articles of the Code.

NOTES

Part 6: Wrap-up and Conclusion

The REALTORS® Code of Ethics ...

- protects the buying and selling public.
- promotes a competitive real estate marketplace.
- enhances the integrity of the industry.
- is your promise of performance.
- is your promise of professionalism.

NOTES

Handout Material

1. The current REALTOR® Code of Ethics.
2. “The REALTOR®’s Code of Ethics – A Gift of Vision” by William D. North
3. The 1913 Code of Ethics
4. Arbitration Guidelines (Suggested Factors for Consideration by a Hearing Panel in Arbitration) from the Code of Ethics and Arbitration Manual.
5. Pathways to Professionalism
6. REALTORS® Pledge of Performance and Service
7. “No losers in Mediation” article
8. “Win/win Solution” article
9. Mediation brochure

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NOTES

APPENDIX A

Suggested Time Chart

Suggested Time	Topic
10 minutes	Icebreaker Exercise Group Work
10 minutes	Icebreaker Exercise Feedback
10 minutes	History and Background of the Code of Ethics
10 minutes	The Preamble
5 minutes	Business Ethics
5 minutes	The Structure of the Code
5 minutes	Pathways to Professionalism
5 minutes	Pathways Exercise Group Work
5 minutes	Pathways Exercise Feedback
15 minutes	Enforcement of the Code
10 minutes	Concepts of Procuring Cause
5 minutes	Article 1 Summary
10 minutes	Article 1 Case Study
10 minutes	Article 2 Summary
10 minutes	Article 2 Case Study
5 minutes	Article 9 Summary
10 minutes	Article 9 Case Study
5 minutes	Article 12 Summary
10 minutes	Article 12 Case Study
10 minutes	Article 16 Summary
10 minutes	Article 16 Case Study
5 minutes	Conclusion

Total Time: 180 minutes

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APPENDIX B

Case Interpretations

Case Interpretations to put in this appendix:

Case Interpretation #2-7

Case Interpretation #12-1

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