

The REALTORS® Code of Ethics New Member Orientation Program

HISTORY AND BACKGROUND

History and Background of the Code of Ethics

- The NATIONAL ASSOCIATION OF REALTORS® formed in 1908.



History and Background of the Code of Ethics

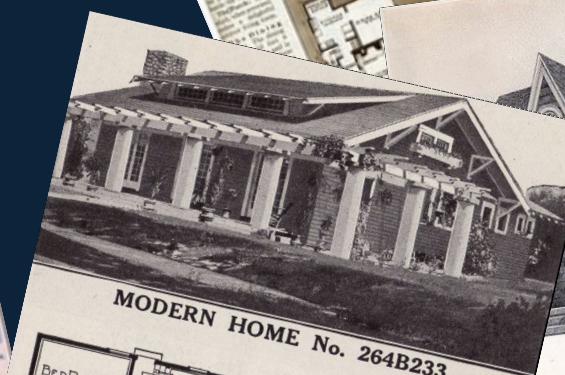
At that time...

- No license laws.
- Real estate industry had a history of speculation, exploitation, and disorder.



The GIDDINGS

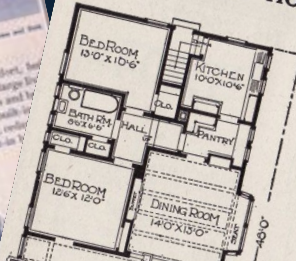
A combination of simple lines and unusual comfort, the Giddings is a delight with roof of asphalt shingles. The large living room has a fireplace and there are built-in cabinets and built-in closet in the master bedroom. Bathrooms have built-in tubs. Rooms are large. There is a linen closet, coat closet and clothes closets. The dining room has built-in...



MODERN HOME No. 264B233

\$1,230⁰⁰

\$1.00 buys the complete plans, specifications and bill of material for this house.



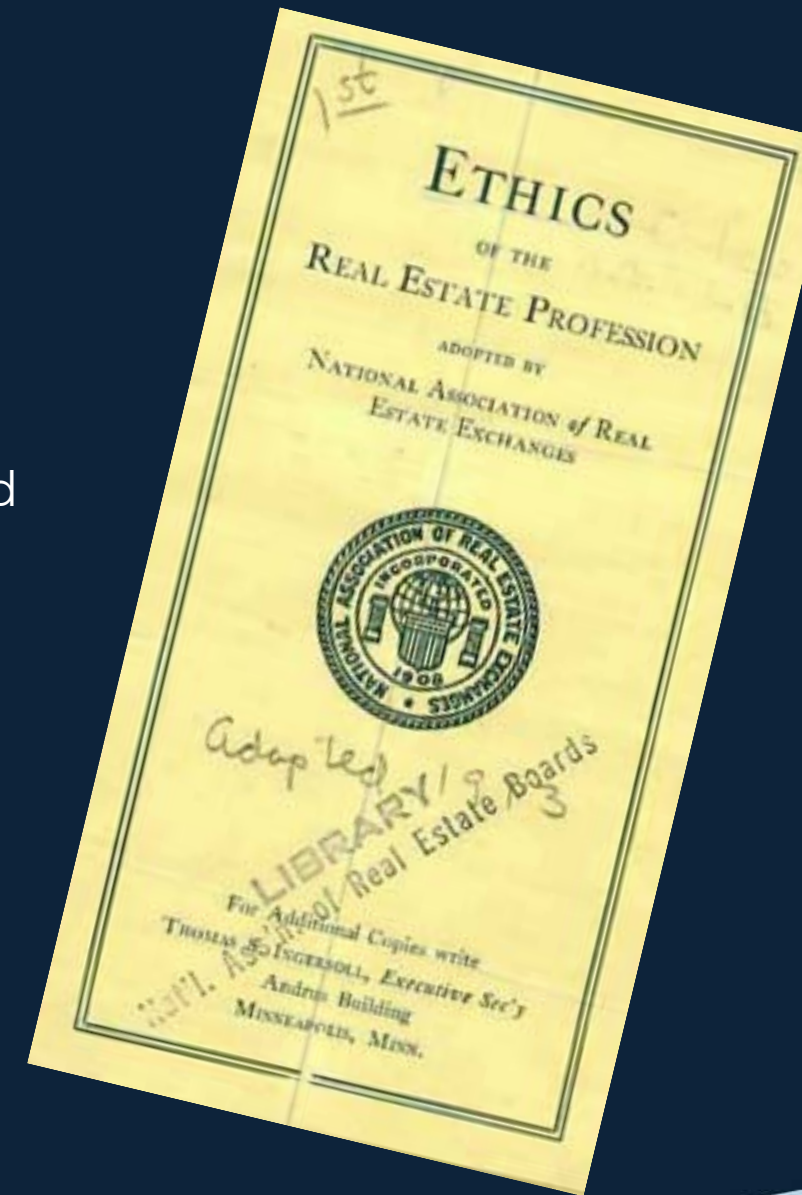
The DREW

In appearance and artistic in detail this home is designed for the discriminating buyer. The roof is of asbestos shingles in rich colors. There is a suite room on the second floor. Cedar lining has been used in one closet. The two magnificent bedrooms are unusual in size and arrangement.



History and Background of the Code of Ethics

- Code was adopted in 1913 to establish a professional standard of conduct.
- Code of Ethics formed the basis for many license laws.



History and Background of the Code of Ethics

- From its inception, the Code of Ethics required arbitration of monetary disputes between REALTORS®.



NAR Executive Vice President
Herbert U. Nelson in 1935

THE PREAMBLE

Under all is the land..

The Preamble

- The Golden Rule
- Widely allocated ownership” and “widest distribution of land ownership”
- Maintain and improve the standards of their calling.

The Preamble

- Share with fellow REALTORS® a common responsibility for the integrity and honor of the real estate profession.
- Strive to become and remain informed on issues affecting real estate.
- Willingly share the fruit of your experience and study with others



The Preamble

- Identify and take steps to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession.
- Urge exclusive representation of clients.
- Do not attempt to gain any unfair advantage over competitors.
- Refrain from making unsolicited comments about other practitioners.

The Preamble

- 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.
- The term REALTOR® stands for competency, fairness, high integrity, moral conduct in business relations.
- No inducement of profit and no instruction from clients can justify departure from these ideals.



Charles N. Chadbourn of Minneapolis, who coined the term REALTOR® in 1916.

The Preamble

- The Preamble can not be the basis for disciplining a REALTOR®.



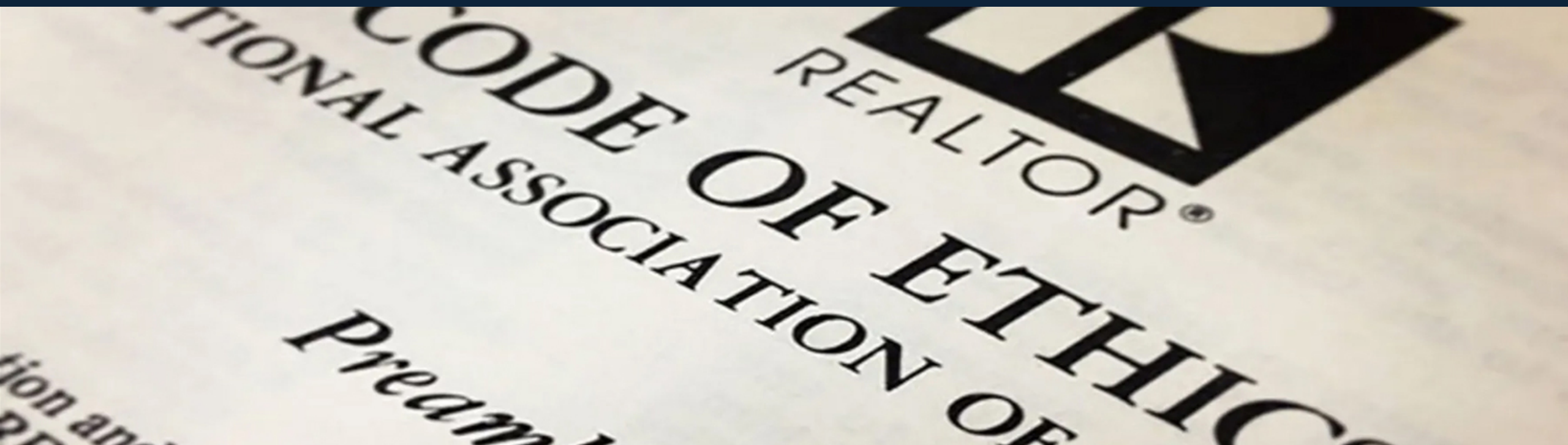
BUSINESS ETHICS

Business Ethics

- Industry codes
- Company policies
- Individual moral values
- Business ethics and legal standards
- Business ethics and the REALTOR® Code of Ethics

Business Ethics

- All REALTORS® regardless of their specialty in the real estate business (appraisal, property management, etc.) are bound by the duties in the REALTORS®' Code of Ethics.



STRUCTURE OF THE CODE

The Three Major Sections

- Duties to Clients and Customers
- Duties to the Public
- Duties to REALTORS®



The Structure of the Code of Ethics

- Three Sections
 - Broad statements of ethical principles
- Standards of Practice
 - Support, interpret, and amplify the Articles under which they are stated

The Structure of the Code of Ethics

- Case Interpretations
 - Specific fact situations to which the Articles and/or Standards of Practice are applied
- Standards of Practice
 - Only Articles of the Code can be violated, though Standards of Practice can be cited in support of an alleged violation

ETHICS/ARBITRATION

Pathways of Professionalism

Three major sections:

- Respect for public
- Respect for property
- Respect for peers



Ethics or Arbitration

- Ethics: Basic Issue
 - Is there a possible violation of the Code of Ethics?
- 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.

The Ethics Enforcement Process

- Who can file a complaint?



The Grievance Committee

- A screening committee comprised of members of the Association appointed to the committee.
- Key question for the Grievance Committee:

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?

Professional Standards Hearing Panel

- Function is to conduct a full “due process” hearing with sworn testimony, witnesses and evidence.
- Hearing panel is comprised of members of the Professional Standards Committee.

Professional Standards Hearing Panel

- After conducting a hearing, the hearing panel decides whether there was a violation of the Code of Ethics, proven by clear, strong and convincing proof.
- If the hearing panel finds a violation of the Code of Ethics, the panel then determines the discipline to be imposed on the violator (respondent).

Authorized Discipline

(and administrative processing fees)

- Letter of Warning
- Letter of Reprimand
- Education
- Fine not to exceed \$15,000
- Probation for one year or less
- Suspension for not less than 30 days nor more than one year
- Expulsion from membership for period of one to three years
- Suspension or termination of MLS privileges
- Cease or refrain or take steps to ensure Code compliance

Authorized Discipline

(and administrative processing fees)

- 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.
- It is not to be used on a case-by-case basis, but rather as an overall policy of the association.

Authorized Process

- Request filed
- Arbitration is conducted under Article 17 of the Code of Ethics and the state arbitration statute (if any).
- ***Arbitrate, Don't Litigate!***



Authorized Process

- Article 17 provides that arbitration occurs under the following circumstances:
 - 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®

Grievance Committee

- Committee performs a screening function similar to review of ethics complaints.
- Key question for the Grievance Committee:

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?

MEDIATION

Mediation

- 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.



Mediation

- Mediation can occur before or after the Grievance Committee reviews requests for arbitration, depending on local Association policy.
- If a dispute is resolved in mediation, the parties sign an agreement spelling out the terms of the settlement, and no arbitration hearing is held.

Mediation

- Mediation is the preferred dispute resolution system of the NATIONAL ASSOCIATION OF REALTORS®.



Mediation

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

Professional Standards Hearing Panel

- Function is to conduct a full “due process” hearing with sworn testimony, witnesses and evidence.
- Hearing panel is comprised of members of the Professional Standards Committee.

Professional Standards Hearing Panel

- After the hearing, the hearing panel decides which REALTOR® is entitled to the award (typically a disputed commission in a transaction), proven by a ***preponderance of the evidence.***

Payment of the Award

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

CONTRACT

CONTRACT

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NAR's Arbitration Guidelines

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

Key Factors in a Procuring Cause Dispute

- No predetermined rule of entitlement may be established by an association.
- Hearing panels should consider the entire course of events.
- 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.

Key Factors in a Procuring Cause Dispute

- 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.”

ARTICLES FROM THE CODE OF ETHICS



Article One

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



Article Two

- ✓ DISCLOSE
- ✓ DISCLOSE
- ✓ DISCLOSE



Article Two

- ✓ 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.



Article Nine

- ✓ Agreements shall be in writing whenever possible;
- ✓ In clear and understandable language;
- ✓ Expressing the specific terms, conditions, obligations and commitments of the parties.
- ✓ A copy of each agreement shall be furnished to each party upon their signing or initialing.



Article Nine

- ✓ Standard of Practice 9-1 requires that reasonable care be used to keep documents current by use of written extensions and amendments.



Article Twelve

- ✓ ***Truth and Honesty*** in real estate communications.



Article Twelve

- ✓ Be honest and truthful in your real estate communications.
- ✓ Present a **“true picture”** in your advertising, marketing, and other representations.
- ✓ REALTORS® must ensure that their status as real estate professionals is readily apparent.
- ✓ Recipients of all real estate communications must be notified that those communications are from a real estate professional.



Article Sixteen

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



Article Sixteen

- ✓ Examples of issues covered by Article 16 and its Standards of Practice:
 - Innovative or aggressive business practices
 - Advertising/solicitations which may be received by other REALTORS® clients
 - Solicitation of listings and agency relationships of clients of other brokers
 - Dealing with other brokers' clients
 - Obligations when entering into exclusive relationships
 - Agency and/or brokerage relationship disclosure

IN 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.



THANK YOU.



NARdotRealtor



nar.realtor

