



CALIFORNIA ASSOCIATION OF REALTORS®
LEADING THE WAY... FOR 110 YEARS™

**FINDINGS OF FACT DRAFTING
GUIDE FOR HEARING PANEL
MEMBERS**

DUTIES TO CLIENTS AND CUSTOMERS

ARTICLE 1

Checklist

- Did the conduct affect a client or another party to the transaction?
- If conduct affected a client:
 1. What is the interest that the REALTOR® did not protect and/or promote?
 2. In what way was the interest important and in need of protection or promotion?
 3. How did the respondent fail to protect or promote the interest?
 4. Would the average REALTOR® in the same circumstances have protected or promoted the client's interest?
- If conduct was directed at another party:
 1. What was the nature of the transaction during which the conduct occurred?
 2. What conduct during the transaction was fraudulent or deceptive?
 3. What evidence is there that the conduct was intentional?

Templates

Failure to Protect or Promote Client's Interest

Respondent represented [*name of party*] as an agent. [*Name of client*] had an interest in [*describe client's interest*]. The client's interest was legitimate because [*explain how interest was important and in need of protection or promotion*]. Respondent failed to protect or promote the client's interest by [*describe conduct*]. A reasonable REALTOR® in the same circumstance would have promoted or protected the client's interest. Respondent therefore violated Article 1 of the Code of Ethics.

Dishonesty to Another Party (Non-Client)

Respondent did not represent complainant as an agent but did have the duty to treat all parties honestly. [*Name of party*] was a party to the transaction. Respondent failed in the duty of honesty by [*describe fraudulent or deceptive conduct*]. This conduct was intentional because [*describe evidence of intent*]. Respondent therefore violated Article 1 of the Code of Ethics.

ARTICLE 2

Checklist

- What facts were exaggerated, misrepresented or concealed?
- Did the Respondent know or should have known the facts that were exaggerated, misrepresented, or concealed?
- How are these facts relevant/pertinent to the property or transaction?
- How did respondent fail to avoid the exaggeration, misrepresentation or concealment?
- Would a reasonable REALTOR® in the same circumstances have avoided the exaggeration, misrepresentation or concealment?
- Did the failure involve latent material defects, matters beyond the scope of the Respondent's license, or confidential information?

Template

The fact [*exaggerated/misrepresented/concealed*] concerned the [*property/transaction*] and was pertinent because [*explain*]. Respondent [*exaggerated/misrepresented/concealed*] the fact that [*describe the fact*] Respondent failed to avoid the [*exaggeration/misrepresentation/concealment*] by [*describe respondent's negligent conduct*]. The average REALTOR® in the same circumstances would have avoided the [*exaggeration/misrepresentation/concealment*]. Respondent therefore violated Article 2 of the Code of Ethics.

ARTICLE 3

Checklist

- (A) What information regarding the listed property was not shared with the other broker?; OR
- (B) In what way was the listed property made unavailable for showing?
- Was withholding the information or making the property unavailable for showing in the client's best interests? Why or why not?
- (NOTE: If the information withheld from another broker was the existence of a dual or variable rate commission arrangement or the existence of accepted offers for the property, including offers with unresolved contingencies, the Respondent is not relieved from the duty to cooperate even if cooperation may not be in the client's best interest. See Standards of Practice 3-4 and 3-6.)

Template

Respondent failed to cooperate with [*name of other broker*], who is a broker, by [*describe information not shared or how property was made unavailable*]. (A) The [*failure to share information/failure to make the property available for showing*] was not in the client's best interests because [*describe client's interest*]; OR (B) Even though the failure to share the information was in the client's best interest, respondent still had a duty to cooperate by disclosing the [*commission arrangement/accepted offer*] in accordance with Standard of Practice [3-4/3-6]. Respondent therefore violated Article 3.

ARTICLE 4

Checklists

Property purchased by Respondent or Offer Written for Immediate Family or Interest Entity

- What interest or relationship is involved? Describe the Respondent's true position [*be specific: spouse, child, parent, sibling, partner, corporate officer, LLC manager, etc.*].
- What was disclosed regarding the interest or relationship?
- Was the Respondent's true position disclosed in writing prior to the signing of the contract?

Sale of Property Owned by Respondent or in which Respondent has an Interest

- What was the Respondent's property interest in the property being sold?
- What was disclosed regarding the property interest?
- Was the Respondent's interest disclosed in writing prior to the signing of the contract?

Templates

Property purchased by Respondent or Offer Written for Immediate Family or Interest Entity

Respondent was [*describe interest or relationship relevant to the transaction*].

Respondent disclosed to the seller [*describe actual disclosure made, if any*].

Respondent's true position in the transaction was [*describe*]. Respondent failed to disclose their true position to the seller in writing prior the signing of the contract.

Respondent therefore violated Article 4.

Sale of Property Owned by Respondent or in which Respondent has an Interest

Respondent offered for sale property which [*describe Respondent's interest relevant to the transaction*]. Respondent disclosed to the buyer [*describe actual disclosure made, if any*]. Respondent failed to disclose their true interest in the property to the buyer in writing prior the signing of the contract. Respondent therefore violated Article 4.

ARTICLE 5

Checklist

- (A) What was the respondent's present interest, if any, in the property?; OR
- (B) What evidence is there that the Respondent, even though they did not have a present interest in the property, contemplated having an interest in the property?
- What disclosure regarding the present or contemplated interest was given?
- Was the disclosure specific enough to inform recipient of the actual present or contemplated interest of the Respondent?
- Was the specific disclosure given to all affected parties? If no, name the party not given the disclosure and how they were affected by the transaction.

Template

Respondent provided [*describe professional services*] concerning [*identify the property*]. At the time, respondent had a [*present/contemplated*] interest in the property, which was [*describe present interest or evidence of contemplated interest*]. Respondent failed to make a specific disclosure of their interest in the property to [*name and description of affected party*]. Respondent therefore violated Article 5 of the Code of Ethics.

ARTICLE 6

Checklist

- What commission, rebate, profit, or referral fee did the Respondent accept?
- What disclosure did the Respondent make to the client prior to accepting the rebate, commission, profit, or referral fee?
- If the Respondent accepted a commission, rebate, or profit, what evidence is there that the client consented to the rebate, commission or profit?

Templates

Commission, Rebate, or Profit

Respondent accepted a [*commission/rebate/profit*] when they [*describe nature of the source of commission, rebate, or profit*]. Respondent failed to disclose the [*commission/rebate/profit*] and gain their client's consent by [*describe any lack of disclosure or failure to obtain consent prior to accepting the commission, rebate or profit*]. Respondent therefore violated Article 6.

Referral Fee

Respondent accepted a referral fee when they [*describe nature of the source of referral fee*]. Respondent failed to disclose the referral fee by [*describe any lack of disclosure relating to the referral fee*]. Respondent therefore violated Article 6.

ARTICLE 7

Checklist

- In what way did the Respondent receive compensation from more than one party?
- What disclosure was made to the parties regarding compensation received?
- How did the Respondent obtain the informed consent of their client(s)?

Templates

Failed to Disclose to all Parties

Respondent received compensation from more than one party to the transaction when they [*describe two sources of compensation*]. The source of all compensation received was not disclosed to [*name party*], a party to the transaction. Respondent therefore violated Article 7.

Failed to Obtain Informed Consent of Client

Respondent received compensation from more than one party to the transaction when they [*describe two sources of compensation*]. Respondent's client [*name client*] did not give their informed consent to the compensation because [*describe lack of consent and/or failure to inform*]. Respondent therefore violated Article 7.

ARTICLE 8

Checklist

- What monies belonging to another came into the Respondent's possession?
- Where did the Respondent keep the monies?
- Were the monies kept in an account at a financial institution?
- Was the institution appropriate for keeping funds in trust?
- Was the account separated from the Respondent's own funds?

Template

Respondent came into possession of monies belonging to [*name of person*] when they [*describe respondent's receipt of the monies*]. Thereafter, Respondent kept the monies [*describe what was done with the monies*]. Respondent failed to keep the monies in [(A) *a special trust account at an appropriate financial institution; OR (B) separated from their own funds*]. Respondent therefore violated Article 8.

ARTICLE 9

Checklist

- What agreement is claimed not to be in writing or not in clear or understandable terms?
- If the claim is the agreement is in writing but not clear or understandable, what is unclear or not understandable and why?
- In what way would it have been possible for the Respondent to assure the agreement was in writing or was clear and understandable?
- Did the Respondent furnish a copy of the agreement to each party at the time of signing or initialing?

Templates

Not in Writing Violation

[Identify parties to the agreement] agreed to *[describe agreement]*. Respondent knew, or should have known, of the agreement because *[describe evidence of knowledge]*. Respondent was in a position to assure that the agreement was in writing because *[describe how Respondent could have assured agreement was in writing]*. Respondent therefore violated Article 9.

Terms and Conditions not Clear or Understandable

[Identify parties to the agreement] agreed by mutual assent to *[describe agreement]*. The terms and conditions of the agreement were not clear and understandable because *[describe problem with terms and conditions]*. Respondent was in a position to assure that the terms and conditions of the agreement were clear and understandable because *[describe how Respondent could have assured agreement was clear and understandable]*. Respondent therefore violated Article 9.

No Copy Furnished Violation

Respondent provided a *[describe agreement]* for the *[signature/initial]* of *[name the party]* without furnishing a copy to each party to the agreement. Respondent therefore violated Article 9.

DUTIES TO THE PUBLIC

ARTICLE 10

Checklists

Unequal Professional Services

- What professional services are claimed to have been denied or provided in an unequal manner?
- In what way were these services denied or provided unequally?
- To what protected class is Complainant claiming membership?
- What evidence is there that the reason for the unequal professional services was Complainant's membership in a protected class?
- What non-discriminatory reason does Respondent offer for his/her conduct?

Discriminatory Real Estate Employment Practices

- Is the Complainant a real estate employee (including administrative or clerical) or independent contractor of the Respondent, or a person seeking such a position?
- To what protected class is Complainant claiming membership?
- What real estate employment practice [hiring, firing, pay, discipline, advancement, or conditions of employment] is claimed to have been denied or provided in an unequal manner?
- What evidence is there the reasons for the complained of employment practice was Complainant's membership in a protected class?
- What non-discriminatory reason does Respondent offer for the practice?

Templates

Unequal Professional Services

Respondent provided professional real estate services to [*name of Complainant*] in the form of [*describe professional services*]. Complainant is [*name status within protected class*]. Respondent failed to provide equal professional services by [*describe how services were denied or provided in an unequal manner*]. The reason for the failure to provide equal professional service was [*describe evidence of discrimination*]. The panel does not find Respondent's non-discriminatory explanation of the professional services provided to be credible or sufficient. Respondent therefore violated Article 10.

Discriminatory Real Estate Employment Practices

Complainant [*name Complainant*] was [*an employee/an independent contractor/seeking employment*] with Respondent. Complainant is [*name status within protected class*]. Respondent failed to conduct non-discriminatory employment practices when [*describe complained of employment practice*]. The reason for the failure was [*describe evidence of discrimination*]. The panel does not find Respondent's non-discriminatory explanation of their real estate employment practices to be credible or sufficient. Respondent therefore violated Article 10.

ARTICLE 11

Checklists

Incompetent Service in Specific Discipline

- What service(s) did Respondent provide?
- What specific real estate discipline was involved?
- What is the standard of practice and competence for services in the specific real estate discipline involved?
- How did the services provided by Respondent fail to conform to the standard of practice and competence for the specific real estate discipline?

Providing a Specialized Professional Service

- What specialized professional service(s) did Respondent provide?
- In what way was the specialized service provided outside the Respondent's field of competence?
- Did Respondent engage the assistance of someone competent in the property or service involved?
- Was it fully disclosed that the specialized professional services involved were outside the field of Respondent's competence?
- If an assistant was engaged, was the identity of the assistance and their contribution disclosed to the client?

Templates

Incompetent Service in a Specific Discipline

Respondent provided [*service provided*] in a real estate transaction involving the specific real estate discipline of [*name discipline*]. The standard of practice and competence for service in the discipline is [*describe standard*]. The services provided by Respondent failed to conform to the standard of practice and competence for the discipline because [*describe reason for failure*]. Respondent therefore violated Article 11.

Specialized Professional Service Case

Respondent undertook to provide specialized professional service when Respondent [*describe services*]. The specialized professional service provided was outside Respondent's field of competence because [*why service outside field of competence*]. Respondent's lack of competence in the field was not disclosed to the client. (A) Respondent did not engage the assistance of anyone competent in the property or service involved in the transaction; OR (B) Respondent engaged the assistance of someone competent in the service involved, but failed to disclose the identity of the assistant or their contribution to the client. Respondent therefore violated Article 11.

ARTICLE 12

Checklists

Dishonest or Untruthful Communications

- What was the document or message imparting news, views, and/or information that is claimed to not be honest or truthful?
- What words, phrases, ideas, concepts, graphics, sounds and/or other components of the communication were false or made the overall communication false?
- What evidence is there that the Respondent intended the communication to be false and/or misleading, or that the Respondent had a reckless disregard for whether or not the communication was true?

Failure to Present a True Picture

- What was the exact advertisement, marketing or representation?
- What was the true picture at the time the advertising, marketing, or other representations were made?
- What inaccuracies, misstatement, exaggerations or misleading material is contained in the advertisement or representation that make it present less than a true picture?

Failure to Clearly Identify Status in Marketing Communication

- Did the advertisement, marketing, or representation identify respondent as a real estate professional?
- In what way did the advertising, marketing, or representation identify the respondent as a real estate professional?
- In what way was the respondent's identity as a real estate professional not obvious, easily perceived or understood, or plain or clear on the face of the advertising, marketing, or representation?

Failure to Notify of Status when Communicating with Member of the Public

- Who received a communication from the respondent?
- What was the exact nature of the communication?
- Did the communication contain notification of professional status?
- Had the recipient been notified previously that they were communicating with a real estate professional? If "yes," how were they notified?
- How did the respondent fail to ensure notification?

Templates

Dishonest or Untruthful Communication

Respondent engaged in the following real estate communication: *[describe communication]*. The communication was (A) deceptive in the following way(s); OR (b) contained the following false statements: *[describe deceptive content]*. The respondent knew the statements or communication itself was false and/or had a willful disregard for the truth of the statements or communication because *[describe evidence of intent]*. Respondent therefore violated Article 12.

Failure to Present True Picture

Respondent publicized the following advertisement, marketing or other representation: *[describe communication]*. The advertising, marketing or representation contained the following statements or representations: *[describe anything inconsistent with true picture]*. The true picture at the time of the advertising, marketing or representation was *[describe true picture]*. Respondent therefore violated Article 12.

Failure to Identify Status in Marketing Communication

Respondent publicized the following advertisement, marketing or representation: *[describe communication]*. Respondent's status as a real estate professional was not readily apparent in the advertising, marketing or representation because *[describe why status was not apparent]*. Respondent therefore violated Article 12.

Failure to Notify of Status When Communicating with Member of the Public

Respondent, in the course of their real estate activities, communicated with *[name of recipient]* by *[describe communication]*. The communication did not identify respondent as a real estate professional. *[Name of recipient]* did not at that time know the communication was from a real estate professional. Respondent, therefore, failed to ensure the recipient was notified that the communication was from a real estate professional in violation of Article 12.

ARTICLE 13

Checklists

Engaged in Unauthorized Practice of Law

- What matters affecting the legal rights of a party did Respondent undertake?
- In what way did Respondent's activities exceed industry practice in arranging a real estate transaction?

Failed to Recommend Legal Counsel

- What interest of a party was affected by the lack of legal counsel?
- Why didn't Respondent recommend that counsel be obtained?
- Would a reasonable REALTOR® in the same circumstances have recommended the party obtain legal counsel?

Templates

Engaged in Unauthorized Practice of Law

Respondent undertook to [*describe matters affecting the legal rights of a party*]. Respondent's activities exceeded industry practices in arranging a real estate transaction because [*describe what respondent did that other real estate professionals would not*]. Respondent therefore violated Article 13.

Failed to Recommend Legal Counsel

During a real estate transaction, a situation arose affecting the legal interest of a party when [*describe legal interest of party affected by lack of counsel*]. Respondent responded to the situation by [*describe how/why Respondent didn't recommend that counsel be obtained*]. A reasonable REALTOR® in the same circumstances would have recommended that the party obtain legal counsel. Respondent therefore violated Article 13.

ARTICLE 14

Checklist

- Was Respondent charged with an unethical practice, asked to present evidence, or asked to cooperate in any other way in a professional standards proceeding or investigation?
- Did Respondent hold membership in the board, affiliated institute, society, or council conducting the proceeding or investigation?
- What facts did Respondent fail to place before the proper tribunal?
- Why were the facts not placed before the tribunal pertinent to the proceeding or investigation?
- In what way, other than not placing pertinent facts before the proper tribunal, did Respondent take action to disrupt or obstruct a professional standards proceeding or investigation?

Templates

Withheld Pertinent Facts

Respondent was [*charged with unethical practice/asked to present evidence/asked to cooperate in any other way*] in a professional standards [*proceeding/investigation*] conducted by a [*board/affiliated institute/society/council*] in which Respondent held membership. Respondent failed to place before the proper tribunal the fact that [*describe the facts*]. These facts were pertinent to the [*proceeding/investigation*] because [*describe reason why the facts were pertinent*]. Respondent therefore violated Article 14.

Disrupted or Obstructed

Respondent was [*charged with unethical practice/asked to present evidence/asked to cooperate in any other way*] in a professional standards [*proceeding/investigation*] conducted by a [*board/affiliated institute/society/council*] in which Respondent held membership. Respondent took action to disrupt or obstruct the [*proceeding/investigation*] when they [*describe disruption or obstruction*]. Respondent therefore violated Article 14.

DUTIES TO OTHER REALTORS®

ARTICLE 15

Checklist

- What statement did Respondent make?
- In what way was the statement false or misleading?
- In what way was the statement about a real estate professional, their business, or their business practices?
- What evidence is there that the Respondent made the statement knowingly or recklessly?

Template

Respondent made the statement that [*actual statement found to have been made*]. Respondent's statement was [*false/misleading*] because [*set out true facts*]. The statement concerned [*a real estate professional/a real estate professional's business/a real estate professional's business practices*]. Respondent made the statement [*knowingly/recklessly*] because [*evidence of intent*]. Respondent therefore violated Article 15.

ARTICLE 16

Checklist

- What evidence is there of an exclusive representation or exclusive brokerage relationship agreement between the Respondent and their client?
- What service did Respondent provide, or offer to provide, the client that was covered by the exclusive representation or exclusive brokerage relationship agreement?
- What evidence is there that Respondent's offer to provide services was not part of Respondent's non-targeted general marketing efforts ("farming")?

Template

REALTOR® [*name of other REALTOR®*] had an [*exclusive representation/exclusive brokerage*] relationship with their client, [*client's name*]. The relationship was evidenced by a [*type of agreement*]. Respondent provided, or offered to provide, the client services covered by the [*exclusive representation/exclusive brokerage*] agreement when they [*describe respondent's actions*]. Respondent's offer to provide services was not part of their non-targeted general marketing efforts because [*explain evidence of targeting*]. Respondent's actions were inconsistent with another REALTOR's® [*exclusive representation/exclusive brokerage*] agreement. Respondent therefore violated Article 16.

ARTICLE 17

Checklist

- Has litigation been filed by one REALTOR® against another?
- Does the litigation involve a matter arbitrable under Article 17?
- Has the Respondent refused to withdraw the litigation?

Template

Respondent, [*name of REALTOR® principal*] filed litigation against [*name of REALTOR® principal*], a fellow REALTOR®. The litigation involved a contractual dispute or specific non-contractual dispute as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®. Respondent was asked to withdraw the litigation and refused. Respondent, therefore, violated Article 17 of the Code of Ethics.