



*presents*

# *The Role of the Hearing Panel*



attorney <input type="radio"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/> panel member
respondent <input type="radio"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/> panel member
witness <input type="radio"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/> panel chairperson
witness <input type="radio"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/> panel member
complainant <input type="radio"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/> panel member
attorney <input type="radio"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="radio"/> board attorney
			<input type="radio"/> recorder <input type="radio"/> Professional Standards Administrator

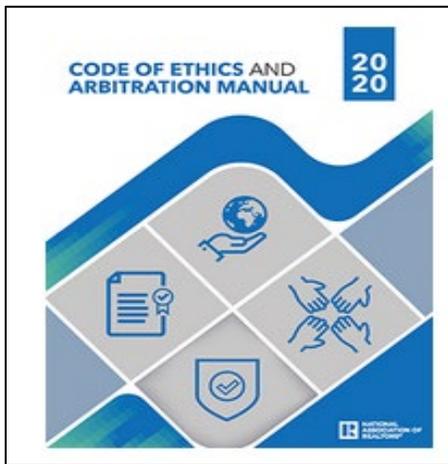
***This program also satisfies***

***The REALTOR® Code of Ethics***

***National Association of REALTORS® Member Education Program***

***Developed by:***

***Diane K. Disbrow, GRI, CRS, CRB, ABR, RSPS, SFR, SRS, SRES, e-Pro®, RENE, PSA***



## Changes to the Code of Ethics and Arbitration Manual

- That Standard of Practice 1-7 be revised as follows (underscoring indicates additions):

*When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease.*

- That a new standard of Practice under Article 3 be adopted:

*REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity*

- That Standard of Practice 12-2 be deleted, and that Standard of Practice 12-1 be revised as follows (underscoring indicates additions, strikeouts indicate deletions).

*Unless they are receiving no compensation from any source for their time or services, REALTORS® may use the term "free" and similar terms in their advertising and in other representations ~~provided that all terms governing availability of the offered product or service are clearly disclosed at the same time~~ only if they clearly and conspicuously disclose (a) by whom they are being, or expect to be, paid; (b) the amount of the payment or anticipated payment; (c) any conditions associated with the payment, and (d) any other terms relating to their compensation*

- **Enhancement to the Interpretations of the Code of Ethics**

1. A new case interpretation relating to Article 16, ascertaining whether a consumer is subject to an exclusive representation agreement
2. A revision to Case Interpretation 1-30 relating to multiple offers where a listing broker offers to reduce his own commission
3. Case #3-13: Timing of Commission Negotiation
4. Revisions to Case Interpretations
  - #16-18 Assumed Consent for Direct Contact
  - # 16-20 Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR®

- **Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, Code of Ethics and Arbitration Manual revised to include:**

Publication under this policy does not authorize dissemination of ethics complaints. Findings and decisions may not be disseminated in their original form, and must be condensed prior to publication.

**Code of Ethics Presidential Advisory Group summary****Background**

The mandatory Code of Ethics training requirement for new and continuing REALTOR® members was established by the NAR Board of Directors at the 1999 Annual Convention with the following goals:

- To heighten member awareness of the key tenets of the Code of Ethics.
- To create an awareness of and appreciation for the role the Code can and should play in their professional lives.
- To enhance professionalism and competency.
  - To encourage REALTORS® to view the Code of Ethics as a living, viable guide in their daily dealings with clients, customers, and the public

**Code of Ethics Training Requirement amendments regarding time frame for completion**

1999 Annual Convention: approved 2.5-hour mandatory training requirement every four years effective January 1, 2001

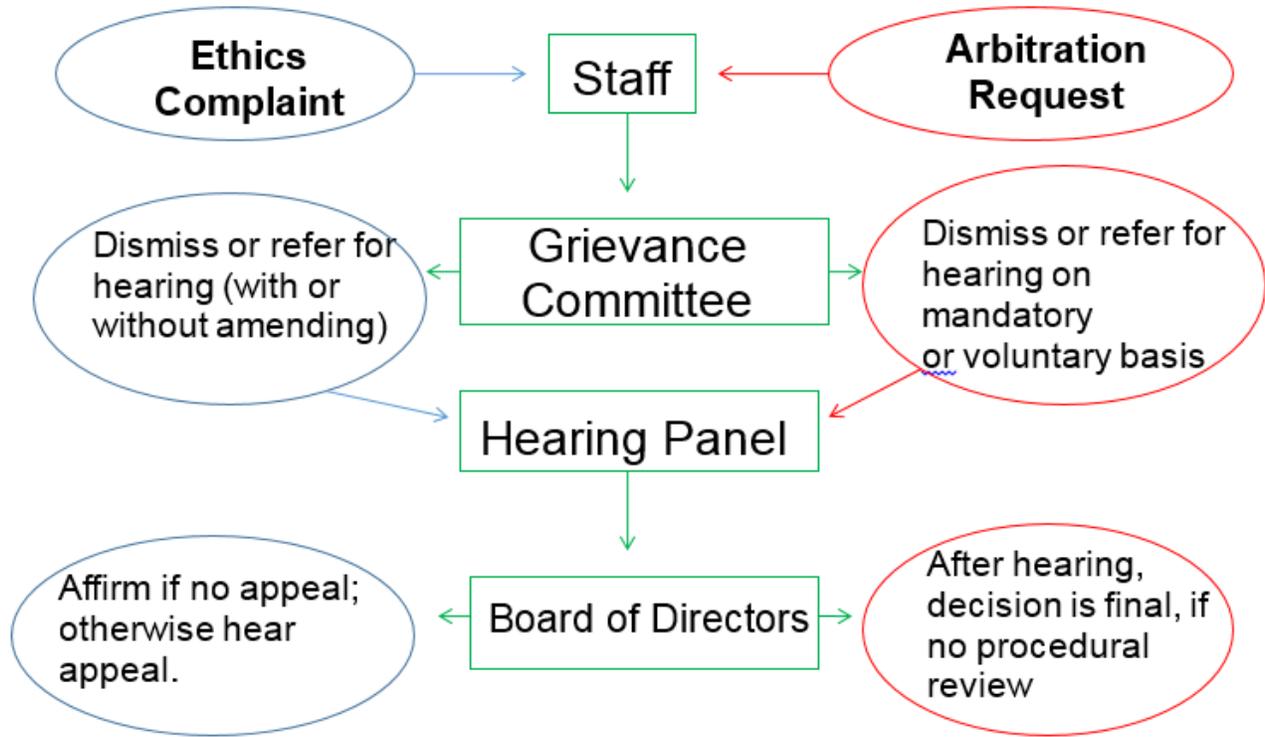
2014 Annual Convention: approved Code of Ethics training now be required every two years effective January 1, 2017

2019 Annual Convention: approved Code of Ethics training be required every three years, and that the current two-year cycle be amended to end December 31, 2021.

**The PAG adopted the following recommendations which were approved by the NAR Leadership Team in September and are now NAR policy**

1. That the learning objectives for the existing member Code of Ethics training be revised to include content on professional conduct, courtesies, business etiquette, and real-life scenarios.
2. That NAR establish Code of Ethics training equivalency options that members can take in order to satisfy the Code of Ethics training requirement, and that the Commitment to Excellence (C2EX) endorsement be an equivalency option.
3. That only courses and equivalencies provided by a local, state or national REALTOR® association can satisfy the Code of Ethics training requirement.
4. That an implementation team be appointed to develop a microsite that compiles all available options for fulfilling the Code of Ethics training requirement, including C2EX ethics modules, NAR-approved online courses, and links to association-approved courses.
5. That the Core Standards requirements be amended to clarify associations' duties regarding administration of the Code of Ethics training requirement.

Ethics Complaints	Arbitration Requests
↓ Call initiates to Association (member of the public or REALTOR® complaint)	↓ Call initiates to Association (usually member to member dispute)
↓ Staff explains/offers Ombudsman service and/or (Mediation if available by policy)	↓ Staff explains/offers Ombudsman service and/or offers mediation if policy allows prior to written request for arbitration
↓ If not resolved through ombudsman or mediation and ethics complaint filed	↓ Mediation must be offered upon receipt written request for arbitration
↓ Staff also explain citation policy on ethics complaints (if board policy)	↓ Either party may request Grievance Committee review prior to mediation
↓ Ethics Complaint received	↓ If not resolved through mediation and Grievance Committee has not reviewed, they now review
↓ Grievance Committee reviews	↓ Dismiss or refer for a hearing on mandatory or voluntary basis
↓ Dismiss or refer for a hearing (with or without amending)	↓ If dismissed, appeal of Grievance Committee allowed
↓ If dismissed, appeal of Grievance Committee decision allowed	↓ If appealed and Board of Directors overturns Grievance Committee dismissal, hearing scheduled
↓ If appealed and Board of Directors overturns Grievance Committees dismissal, refer for a hearing	↓ Post Hearing, award of arbitrations signed, provided to parties
↓ Refers to Citation Panel first (if board policy)	↓ 20 days to request procedural review
↓ If referring for hearing, ethics Mediation offered or citation issued (if policy allows)	↓ If procedural review request received, Directors handle
↓ Hearing Scheduled	↓  Decision is final
↓ Post hearing, decision written, provided to parties	
↓ 20 days to appeal	
↓ Directors affirm if no appeal OR	
↓  Decision is final	



## Professional Standards Trivia





## *Due Process: Uniform and Fair enforcement*

### **Importance of Due Process to Code Enforcement**

- Board membership is a valuable property right
- Critical to the ability to self-policy
- Guards against antitrust liability

### **Concepts of Due Process**

- Fundamental idea of fairness

### **Principles of Due Process and How to Provide It**

- Right to know nature of complaint/arbitration in advance
- Opportunity to prepare an adequate defense
- Right to call witnesses
- Right to present evidence/testimony
- Right to cross-examine witnesses called by other side
- Right to have legal counsel present
- Right to a hearing before an impartial peer panel
- Right to appropriate sanctions
- Right to an appeal

### **Five E's of Due Process**

- Equality
- Economy
- Expedition
- Evidence
- Equity

**Work with your fellow REALTORS® at your table to decide on the correct procedure to follow given these scenarios**

1. **What if** an alleged bad act occurred in December when the respondent is a REALTOR®. He fails to pay dues and his membership is terminated March 1<sup>st</sup>. A complaint is filed in April. Can the Association process this complaint or must they hold it in abeyance until the respondent rejoins this or another REALTOR® Association?
2. **What if** the respondent's attorney sends a letter to the association challenging arbitrability. She insists the matter is NOT arbitrable. What would be the appropriate action to take?
3. **What if** a postponement is granted to a party that has requested it and the other party wants to know the reason for the postponement. Is the other party entitled to know the reason why the postponement was granted?
4. **What if** the grievance committee dismissed an ethics complaint as being not timely filed. That decision was appealed and the board of directors overturned the grievance committee's decision, forwarding the ethics complaint for a hearing. May the hearing panel, in a pre-hearing meeting, hear arguments relative to the 180 days if new information is included in the response which was submitted **subsequent** to the director's review?
5. **What if** a party requested that their witness, a member of the public, who is going through chemo treatments, be allowed to testify remotely. The chairperson grants permission but is concerned about confidentiality. How might the chair person, via staff, address the issue of confidentiality and yet still allow the remote testimony.



## ***Findings of Facts***

### ***What Every Panelist Should Know***

#### **Findings of fact should tell the story**

- Be comprehensive
- Succinct
- Provide rationale for each article
- Written even if no violation found (why not?)
- State which Article was/was not violated and why
- Written so the reader knows the story. What happened?

#### **What the panel must decide**

- Violation or no violation for each Article charged
- Authorized discipline
- None

#### **Authorized Sanctions**

- Letter of warning
- Letter of reprimand
- Education - specify type, when, where
- Fine not to exceed \$15,000
- Suspension of board membership and/or MLS access for no less than 30 days nor more than one year
- Fine not to exceed \$15,000 in lieu of suspension
- Expulsion from membership and/or MLS access
- Cease or refrain from continued conduct deemed to be in violation of the Code

**NOTE:** Probation is not discipline, however, a hearing panel can recommend the disciplined member be placed on probation for not more than one year.

## Discipline should be detailed

- State what course or class and when/where it is held (verify availability)
- Specific time frame an individual has to comply with discipline  
Examples: *A course of education in the Code of Ethics of not less than three hours. This course must be completed within six months from transmittal of the Directors' final decision.*  
*\$500 fine to be paid within 15 days of the transmittal of the board of director's final decision*
- Specific time frame of the suspension/expulsion and when it begins/ends
- Specify how long letters of reprimand and warning will remain in the respondent's file, otherwise it is there indefinitely
- Consequences that will automatically be imposed if member does not comply with original discipline
- If suspension or expulsion is imposed for noncompliance with other discipline, note whether the individual must first comply with the outstanding discipline before he/she may be reinstated or readmitted.

## Administrative processing fees

- If found in violation, administrative processing fees not to exceed \$500
- A matter of Board/Association policy and is not discipline

## Sanctioning guidelines

- Appendix VII to Part 4, *Code of Ethics and Arbitration Manual*
- Discipline should be progressive
- Take into consideration previous violations and sanctions in this or any other Board/Association
- What was the nature of the violation? Did it cause anyone harm?
- Was it intentional or inadvertent? Were there any mitigating circumstances?
- Did they acknowledge the behavior and show remorse?

## Executive session

- Up to board procedure whether board counsel/staff remain
- No new information solicited or received from parties
- No witnesses called or recalled
- Standard of proof: "clear, strong and convincing"
- No ability to amend complaint
- Findings of the hearing panel to be decided/written
- Majority of hearing panel to sign decision

*Truly Finest Association of REALTORS  
411 Great Street  
Anywhere, USA 41111*

March 22, 2020, via e mail

TO: Respondent: REALTOR® Michael Rose  
FROM: Sally Sharp, Professional Standards Administrator  
Cc: Complainant: REALTOR® Sue Applegate  
REALTOR® Principal Ralph Cramden

**RE: Case No. 911(E) REALTOR® Sue Applegate vs. REALTOR® Michael Rose**

Dear REALTOR® Rose

The Truly Finest Association of REALTORS® has received an ethics complaint from REALTOR® Sue Applegate charging you with an alleged violation of Articles 12 and 16 of the Code of Ethics. A complete copy of the complaint and Code of Ethics is attached

The Grievance Committee met on March 22<sup>nd</sup> and, after full and careful consideration, referred the ethics complaint alleging a violation of Articles 12 and 16 to the Professional Standards Committee for hearing. Please see a copy of Grievance Committee Report (Form #E-5.1) attached.

A tentative ethics hearing date has been scheduled for Friday, April 28, 2020 at 9:00 a.m. Confirmation of the date, time, and place of the hearing will be forthcoming in the near future giving all parties at least 21 days advance notice.

We request that you submit a response to the complaint (Form #E-3) within fifteen (15) days from the date of this letter. Be sure to attach a separate dated and signed statement, which sets forth your position relative to this complaint. Your response will be provided to the Professional Standards Hearing Panel and the Complainant in advance of the hearing.

By copy of this letter to the complainant, I am including for both parties, Form #E-6, Notice of Right to Challenge Tribunal Members, and Form #E-7, Challenge to Qualifications by Parties to Ethics Proceedings. If either party has any challenges for cause, please return the forms within ten days from the date of this letter. Failure to return the form within this 10-day time period will be interpreted as your acceptance of all prospective panel members.

Also attached for both parties is Form #E-9, Outline of Procedure for an Ethics Hearing. Please review so you will know what to expect at the hearing. Please be aware that communications pertaining to this case will be via email. You are required to confirm receipt of the email communications and attachments.

Given the restrictions imposed due to COVID-19, an in person, face to face, hearing at the offices of the Truly Finest Association of REALTORS® is not feasible.

Via this communication, both parties are informed that the Chair of the Hearing Panel has decided to conduct the hearing via Zoom. This would require downloading the Zoom app, a test of everyone's ability to get on the system, and maintaining adequate confidentiality in each participant's location. No phones, pagers, tablets, or any other electronic device that can record the proceedings will be allowed. To find out more about the Zoom

app, you may wish to go to their website Zoom.com, find the “Zoom Help Center” and the “Getting Started” topic, and locate the article “Quick Start Guide for New Users.”

Please respond to this disclosure, about conducting this hearing virtually in writing, within five (5) calendar days of this notice (March 27, 2020), informing the Board of your position on the matter. Your positions will be submitted to the Hearing Panel Chair for disposition

I encourage you to call me at (555) 123-4567 if you have any questions or need clarification of any aspect of the ethics complaint process. I am a neutral party available to assist all parties with respect to the appropriate and required procedures that are followed in the complaint process.

**Attachments for Respondent:** *Complaint, 2020 Code of Ethics, Ethics Reply, Form #E-3*  
**Attachments for Complainant & Respondent and Respondent’s Principal Broker:** *Grievance Committee Report Form, #E-5.1 Notice of Right to Challenge Tribunal Members form #E-6, Challenge to Qualifications by Parties to Ethics Proceedings, Form #E-7, Outline of Procedure for an Ethics Hearing, Form #E-9*

Form #E-1

Truly Finest Association of REALTORS®

Board or State Association

411 Great Street

Address

Anywhere

City

US

State

41111

Zip

Filed, 3/20/2020

REALTOR® Sue Applegate

REALTOR® Michael Rose

Complainant(s)

Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) 12 and 16 of the Code of Ethics and/or other membership duty as set forth in the bylaws of the Board in Article, Section and alleges that the above charge(s)

(is/are) supported by the attached statement, which is signed and dated by the complainant(s) and which explains when the alleged violation(s) occurred and, if a different date, when the complainant(s) first knew about the alleged violations.

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later.

Date(s) alleged violations violation(s) took place: 3/3/20 with respect to Article 12. That is when I saw his website.

Date(s) you became aware of the facts on which the alleged violation(s) (is/are) based: 3/20/2020 with respect to Articles 12 and 16 as that is the date my seller contacted me about the list/sale price ratio and Michael Rose also tried to refer him to another broker.

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

Yes No

You may file an ethics complaint in any jurisdiction where a REALTOR® is a member or MLS participant. Note that the REALTORS® Code of Ethics, Standard of Practice 14-1 provides, in relevant part, "REALTORS® shall not be subject to disciplinary proceeding in more than one Board of REALTORS® . . . with respect to alleged violations of the Code of Ethics relating to the same transaction or event."

Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS®?

Yes  No

If so, name of other Association(s): \_\_\_\_\_ Date(s) filed: \_\_\_\_\_

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from transmittal of the dismissal notice to appeal the dismissal to the Board of Directors.

Complainant(s):

Sue Applegate

Type/Print Name

*Sue Applegate*

Signature

Type/Print Name

Signature

Cream of the Crop Realty 450 Broad Street, Anytown, USA 55555

Address

201-555-4456

Phone

[Sue@CCR.net](mailto:Sue@CCR.net)

Email

(Revised 11/15)

## ATTACHED STATEMENT

Realtor® Michael Rose has violated Article 12 and 16 of the Code of Ethics. When I saw his webpage that violated Article 12, I was upset because it is a lie but I was actually considering just letting it go. Michael and I used to work together as a team and I just didn't want the conflict and stress of filing this complaint.

It was the violation of Article 16 that made me decide to file this. One of my seller clients called me last week and asked me what the list/sale price ratio of my company was. I thought that was a strange question coming from Mr. Brady whose home I have had listed for five months. He said he wanted to know because his home was shown that day by Michael Rose of Rewards Realty who left his business card (which I might add is 4" x 6") and it said on that card that their company list/sale price ratio was substantially higher than their competitors. He also said that Michael Rose asked him where he was moving to and offered to refer him to a broker in that area.

I asked my secretary to look at our showing records to see which MLS listed homes Michael Rose had shown in the past few weeks and I asked the listing agents of those homes in my office to contact their sellers and inquire if Mr. Rose had left his "card" (if you can call it that) at their home and also if he asked any of the sellers about referring them to where they were moving. Of the 10 listings he showed, 9 of the sellers recalled having a conversation with Mr. Rose about possibly referring them to another broker and he handed his "card" to all of those sellers.

It sounds like not only is Mr. Rose distributing false information on his website but on his business card as well and I believe he is violating Article 16 by entering into these conversations about referrals with these listings. I actually think he is targeting listings in the MLS to solicit referral business which is a violation of Standard of Practice 16-18.

Attached you will find a copy of REALTOR® Roses' company webpage where he is claiming that his company did an evaluation based on MLS data of the list/sale ratio of their listings compared to their competitors and he claims Rewards Realty company list/sale ratio is substantially higher than those of his competitors. And a copy of his business card that also says the same misrepresentation. Neither of these marketing pieces meet the "true picture" test of Article 12.

Well, my firm, Cream of the Crop Realty, is one of those "competitors" he mentions and this statement is completely FALSE! I conducted an exhaustive study of **ALL** the sales in the MLS that shows the claims made by Michael Rose of REWARDS REAL ESTATE aren't even close to true.

*Sue Applegate*

Sue Applegate

Cream of the Crop Realty

ENCLOSED IS A COPY FROM MICHAEL ROSE COMPANY WEB PAGE

## REWARDS REAL ESTATE LLC

### Understanding the List/Sale Price Ratio

One of the measures by which people in the real estate business evaluate the quality of the service they provide is by evaluating the ratio of the sale price of a property to its original list price.

For example, let's say a property is listed on the market at \$100,000 and it sells for \$98,000. It is then said that the list/sale ratio is 98%. On the other hand, let's say another property, listed at \$100,000, sells for \$92,000 instead. The list/sale ratio for this property is 92%.

We believe this ratio is an important statement about the quality of service provided by a real estate company and a measure of their ability to serve a seller's best interests.

We, at REWARDS REAL ESTATE, LLC are proud to report that we have just completed an evaluation of the list/sale ratio of our sales over the last six months and compared it to the list/sale ratio of all of our competitors' sales in Greenville and found that our list/sale ratio is **substantially higher** than those of our competitors.

**Of all the real estate companies in Greenville, we always deliver.....with the least problems.**  
Call Michael Rose, at Rewards Real Estate today at 123-555-1212 to discuss the best possible marketing plan for your property. You'll be glad you did!

Information for the above-mentioned evaluation was obtained from published reports of the Greenville Area Regional Multiple Listing Service. The information presented here relies on the accuracy of those reports.

### MICHAEL ROSE BUSINESS CARD

## REWARDS REAL ESTATE, LLC



Michael Rose,  
123 Broad Street  
Greenville, USA 12345  
Call me at:  
123-555-1234

Ask me about Rewards Real Estate list/sale price ratio! It's substantially higher than those of our competitors\*.

\*Information for the above-mentioned evaluation was obtained from published reports of the Greenville Area Regional Multiple Listing Service. This statement relies on the accuracy of those reports.

Form #E-5.1

Grievance Committee Report Form
(Return to association when completed)

Case # 911 REALTOR Sue Applegate REALTOR Michael Rose
Complainant(s) Respondent(s)

On March 22, 2020 the Truly Finest Association of REALTORS®
Date Board

Grievance Committee met to review the above-referenced matter which is a(n) Request for Arbitration Ethics Complaint
As a result of that meeting, the Grievance Committee recommends the following action.

Arbitration Request

The arbitration request is a matter for mandatory arbitration and shall be forwarded to the Professional Standards Committee for a hearing.

The arbitration request is a matter for voluntary arbitration and shall be forwarded to the Professional Standards Committee for a hearing,
provided that all parties agree.

The arbitration request is not a matter for arbitration and the Grievance Committee dismisses the request. The complainant has the right to appeal
the dismissal to the Board of Directors within 20 days from the date that staff transmits the dismissal notice.

Reason for dismissal: not timely filed not arbitrable board does not have jurisdiction
other (explain)

Ethics Complaint

The complaint, if taken as true on its face, constitutes potentially unethical conduct and will be forwarded to the Professional Standards Committee
for a hearing. Articles originally charged: 12 and 16

The complaint is amended by adding and/or deleting the following Articles and will be forwarded to the Professional Standards Committee for a
hearing:

Articles Added Articles Deleted

Rationale for Article(s) added:

Reason for dismissing Articles: not timely filed allegations do not demonstrate a possible violation of the Code
other (explain)

Note which reason is applicable to which Article(s) dismissed. If the complainant does not agree with deleting an Article(s), complainant may
appeal the dismissal of the Article(s) to the Board of Directors within 20 days of transmittal of the dismissal notice.

If no appeal is filed, the complaint, as amended, shall be forwarded to the Professional Standards Committee for hearing. If an appeal is filed,
then no hearing will be held until the appeal is heard.

Reason for dismissing complaint: not timely filed allegations do not demonstrate a possible violation of the Code.
association does not have jurisdiction over the respondent
other (explain)

If the complainant does not agree with the dismissal of the complaint, the complainant may appeal the dismissal to the Board of Directors within
20 days from transmittal of the dismissal notice.

Howard Jones
Grievance Committee Chairperson

March 22, 2020
Date

Truly Finest Association of REALTORS®

Board of State Association

411 Great Street Anywhere, USA 41111
Address City State Zip

Notice of Right to Challenge Tribunal Members\*

Notice is given herewith to parties in the matter of REALTOR® Sue Applegate vs. REALTOR® Michael Rose, an ethics proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualifications of any of the individuals listed who may be appointed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or a copy of same with a letter (or enclosed Form #E-7, if preferred) to the (Professional Standards Committee Chairperson) (Professional Standards Administrator) explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 2, Qualification for Tribunal, challenges must be filed with the Board not later than ten (10) days after the date the list of names is transmitted.

- Smarty Marty Challenge: Yes\_\_\_\_\_No
Sherry Serious Challenge: Yes\_\_\_\_\_No
Mary Mandate Challenge: Yes\_\_\_\_\_No
Capt. Morgan Challenge: Yes\_\_\_\_\_No
Jack Daniels Challenge: Yes\_\_\_\_\_No
John Walker Challenge: Yes\_\_\_\_\_No
Jim Beam Challenge: Yes\_\_\_\_\_No
Woodford Reserve Challenge: Yes\_\_\_\_\_No
Adolph Coors Challenge: Yes\_\_\_\_\_No
Arthur Guinness Challenge: Yes\_\_\_\_\_No
Remy Martin Challenge: Yes\_\_\_\_\_No

Party's Name (Type/Print) Party's Signature Date

Party's Name (Type/Print) Party's Signature Date
(Revised 11/14)



Truly Finest Association of REALTORS®

Board or State Association

411 Great Street

Anywhere

USA

41111

Address

City

State

Zip

**Outline of Procedure for Ethics Hearing**

(To be Transmitted in Advance to Both Parties)

**Remote testimony:** Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to ethics hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

**Recording the hearing:** The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with advance express consent of the parties and the panelists. Copies of any recording or transcripts are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties.

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

**Due process procedure:** The hearing procedures will be:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The complaint will be read into the record.
- (3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.
- (4) Opening statements, first by complainant, then by respondent, briefly explaining party's basic position.
- (5) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses. All parties appearing at the hearing may be called as witnesses without advance notice.
- (6) The parties and their counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.
- (7) The panel members may ask questions at any time during the proceedings.
- (8) The Chairperson may exclude any question ruled to be irrelevant or argumentative.
- (9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.
- (10) Adjournment of hearing.

The Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedures of **Part Four**, Sections 22 and 23 of the *Code of Ethics and Arbitration Manual*.

**Use of counsel:** A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them

by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

(Revised 5/16)

Form #E-3 received from Michael Rose via e mail on March 25, 2020

Truly Finest Association of REALTORS®

411 Great Street

Anywhere

US

41111

Reply (Ethics)

To the Professional Standards Committee of the

Truly Finest Association of REALTORS®

Board or State Association

Filed March 25 2020

REALTOR® Sue Applegate

Complainant(s)

REALTOR® Michael Rose

Respondent(s)

In a matter of alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of this Board.

Respondent(s) replies and substantiates such reply by the following facts and/or attached statement:

*I most certainly did not violate the Code of Ethics. I think Sue is upset because she didn't think of referring her sellers to another broker and I did! Snooze you lose Suze!! I didn't solicit any of the listings held by Cream of the Crop Realty or any other broker. I am just a service-oriented REALTOR® so I offer to refer sellers to agents where they want to move to. It's a great source of income as well. And, I am also not sure how the grievance committee thought Article 12 was violated. I have a disclaimer on my business card and website.*

*Michael Rose*

Rewards Real Estate

This is true and correct to the best knowledge and belief of the undersigned. I (we) declare that to the best of my (our) knowledge and belief, the statements contained in this Reply are true and correct.

I understand that, if found in violation of the Code of Ethics or other membership duty, a respondent will be assessed an administrative processing fee of \$500\*.

Respondent(s): Michael Rose

*Michael Rose*



. Form #E-11

Truly Finest Association of REALTORS®

<hr/>			
Board or State Association			
<hr/>	<hr/>	<hr/>	<hr/>
411 Great Street	Anywhere	USA	41111
Address	City	State	Zip

Decision of Ethics Hearing Panel  
of the Professional Standards Committee

Filed April 28, 2020

<hr/>	<hr/>
REALTOR® Sue Applegate	Former REALTOR® Michael Rose
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
Complainant(s)	Respondent(s)

Findings of Fact: The hearing panel finds the following facts in support of its conclusion regarding the alleged violations of the Code of Ethics:

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Conclusions of the Hearing Panel: We, the members of the Hearing Panel in the above-stated case, find the Respondent(s) (in violation) (not in violation) of Article(s) \_\_\_\_\_ of the Code of Ethics.

Prior Violations, if Any:

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Recommendation for Disciplinary Action, if any, if Violation Found: We recommend to the Board of Directors the following action:

---

Rationale for Discipline, if any, if Violation found: (e.g., previous violations):

---

Consequences for Noncompliance with Discipline:

The decision, findings of fact, and recommendation(s) preceding were rendered by an ethics Hearing Panel comprising the following members whose signatures are affixed below. The hearing took place on

\_\_\_\_\_, 20 \_\_\_\_\_.

_____	Chairperson	_____	Member
Type/Print Name		Type/Print Name	
_____		_____	
Signature		Signature	
	Member		Member
_____		_____	
Type/Print Name		Type/Print Name	
_____		_____	
Signature		Signature	
	Member		Member
_____		_____	
Type/Print Name		Type/Print Name	
_____		_____	
Signature		Signature	

Notice: This decision is not final and is subject to certain rights of both the complainant and the respondent.

**Complainant’s Rights:** Within twenty (20) days of transmittal of this notification, the complainant may file an appeal with the President for a hearing before the Directors based only upon an allegation of procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. A transcript or summary of the hearing shall be presented to the Directors by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or the transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary.

**Respondent’s Rights:** Within twenty (20) days of transmittal of this notification the respondent may file an appeal with the President for a hearing before the Directors challenging the decision and/or recommendation for discipline. The respondent’s bases for appeal are limited to (1) a misapplication or misinterpretation of an Article(s) of the Code of Ethics, (2) procedural deficiency or any lack of procedural due process, and (3) the discipline recommended by the Hearing Panel. A transcript or summary of the hearing shall be presented to the Directors by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary.

**Final Action by Directors:** Both the complainant and respondent will be notified upon final action of the Directors.

**NOTE TO HEARING PANEL:** Respondents may only be found in violation of Articles they have been formally charged with having violated. If the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Association, when determining discipline and the rationale for the current action can be provided to the parties and the Directors as part of the decision. The Hearing Panel’s consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel).

*(Revised 11/14)*



**Conduct at a hearing**

- Etiquette” at the hearing
- Questions by panel members
- Ask appropriate questions
- Do not make statements
- Do not ask leading questions
- Ask questions to clarify information

**Standard of Proof – Policy Statement #26**

- Arbitration Hearings
  - ✓ "Preponderance of the evidence"
  - ✓ "Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not."
- Ethics Hearings
  - ✓ Standard of proof is "clear, strong and convincing" evidence.
  - ✓ "Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established."

### HEARING PANEL CHECKLIST

#### BEFORE THE HEARING

- Call ASAP if there is an emergency
- Is alternate member able to attend?
- Dress in Professional Business Attire
- Don't wear a company name badge
- Review all materials carefully
- Review Code of Ethics, relevant Case Interpretations
- Write out questions in advance
- Be impartial going in
- Don't discuss the case
- Only hearing panel, staff and/or board counsel should be in the room before the hearing
- Tape recording off

#### CHAIRPERSON

- Know how to pronounce everyone's name
- Know your board's policy about recording
- Start on time
- Be flexible, but firm. You are in charge!
- Explain rulings calmly and sensibly
- Call a recess if emotions run high
- Call a recess if you are unsure how to rule
- Know the concepts of due process
- Know the manual and follow outlined procedure
- Ask witnesses to leave after sworn in and after testimony
- Keep the doors closed throughout the hearing
- Have everyone turn off their cell phones
- Stop if anti-trust issues come up

#### HEARING PANELISTS

- Objectivity is very important
- Always wait to be acknowledged by the Chair before speaking
- Let the Chair know if you need a recess or feel one is necessary to correct something
- If you are unsure if a question is appropriate – let the chair decide
- Pay attention
- Watch your body language and tone of voice
- Avoid shaking your head, rolling your eyes
- No yawning, looked bored, annoyed. NO NAPPING!
- Avoid laughing
- Ask questions for clarification
- Don't make statements, ask only relevant questions

#### HEARING PANELISTS (CONTINUED)

- Don't try to help either side
- Allow each side to present their case without Interruption
- Don't press issues
- Don't allow ethics to come up in arbitration
- Watch hearsay evidence
- Ask all procedural questions of the chair
- Don't eat, smoke during the hearing
- Keep the area clean
- Shut off cell phones
- Don't leave unless there is an emergency
- Be courteous and professional at all times

#### WHEN ASKING QUESTIONS

- Watch your tone of voice
- Wait to be recognized
- Avoid leading questions
- Ask in a positive, open ended manner
- Ask to clarify – don't help either party
- Stay away from judgmental words like "why" or "should"

#### WHEN ADDRESSING ANYONE

- Speak slowly and evenly
- Don't interrupt –only one person at a time
- Address parties by surnames and avoid using first names.

#### AFTER THE HEARING

- Turn off the tape and close the door
- Before deliberating, allow panelists to refresh
- It's ok for panelists to disagree
- Present your opinion, avoid personal or derogatory comments
- No amendments can be made
- The hearing is over – the case stands as submitted
- Write clear, succinct findings of fact "tell the story" in ethics cases.
- No rationale in arbitration cases.
- If respondent is in violation of the Code, ask to see members file to determine appropriate discipline.
- May refer to sanctioning guidelines for assistance in determining discipline
- Be specific in type of education, when and where
- Time frame for compliance and consequences for non-compliance
- Conditions for reinstatement



## ***Procuring Cause***

### **Determining Arbitrability**

Who determines arbitrability?

- Section 42 of the CEAM
- Appendix 1 to Part Ten of the CEAM
- Bases for arbitration in the REALTOR® system, limited to Article 17 conditions

### **Procuring Cause – Basis for Award**

- A general legal definition for procuring cause from *Black's Law Dictionary*, Fifth Edition,

*The proximate cause; the cause originating a series of events which, without a break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with "efficient cause."*

*A broker is the procuring cause of a sale if he or she initiates a series of continuous events that result in a sale . . . courts insist that the full commission go to the broker who was the primary, proximate and procuring cause of the sale. -- From Real Estate Law, Second Edition, Gibson*

### **Background Information**

- Consideration of "contract-in-hand" and "threshold" rules
- NAR Professional Standards Committee
- Exceptions to contractual relationships rule (Standard of Practice 17-4)
- NAR Board of Directors reaffirms procuring cause
- Arbitration worksheet

**Arbitration Guidelines (Suggested Factors for Consideration by a Hearing Panel in Arbitration), Appendix II to Part Ten of the CEAM, include the following.**

**Factor #1: No predetermined rule of entitlement**

- Multiple Listing Service owned by, operated by or affiliated with a Board, which establishes, limits or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.
- Rules of thumb (such as no “threshold” or “contract” rule)
- Agency relationship not determinant of procuring cause; agency and entitlement separate issues

**Factor #2: Arbitrability and appropriate parties**

- Questions of arbitrability and appropriate parties named can be considered by panel

**Factor #3: Relevance and admissibility**

- Possible ethics violations in arbitration hearings:
  - 1) can be considered as part of the evidence
  - 2) cannot be used to withhold an otherwise substantiated award
  - 3) should be considered only as one of the many potentially relevant factors in the decision
- Generally, state law controls
- Any relevant evidence is generally admissible

**NOTE:** Arbitration hearing panels do not make referrals of ethical concerns that arise during a hearing.

**Factor #4: Communication and contact**

- **Abandonment:** “Whether the broker’s inactivity, or perceived inactivity, may have caused the purchaser to reasonably conclude that broker had lost interest or disengaged from the transaction.” -- *Code of Ethics and Arbitration Manual*
- **Estrangement:** “Whether the broker engaged in conduct or alternatively failed to act when necessary which caused the purchaser to terminate the relationship...This can be caused, among other things, by words or actions or lack of words or actions when called for.” -- *Code of Ethics and Arbitration Manual*

**Factor #5: Conformity with State law**

**Factor #6: Consideration of entire course of events (“The Questions”)**

**The Arbitration Worksheet** A great tool but it’s not a score card!

Arbitration Worksheet

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
1. Was an offer of compensation made through the MLS or otherwise?					
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to a different representative of the buyer/tenant?					
(d) Was the "introduction" merely a mention that the property was listed?					
(e) Was the property introduced as an open house?					
(f) What subsequent efforts were made by the broker after the open house?					
(g) What property was first introduced?					
6. When was the first introduction to the property that was sold/leased made?					

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
(a) Was the introduction made when the buyer/tenant had a specific need for that type of property?					
(b) Was the introduction instrumental in creating the desire to purchase/lease?					
(c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease?					
(d) Were there previous dealings between the buyer and the seller?					
7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?					
8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?					
9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?					
(a) Were agency disclosures made? When?					
(b) Was the potential for dual agency disclosed? When?					
10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)?					

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser?					
12. Did the buyer make the decision to buy independent of the broker's efforts/information?					
13. Did the seller act in bad faith to deprive the broker of his commission?					
(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?					
(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?					
(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?					
14. Did the buyer seek to freeze out the broker?					
(a) Did the buyer seek another broker in order to get a lower price?					
(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?					
(c) Did the contract provide that no brokers or certain brokers had been involved?					

Code of Ethics and Arbitration Manual

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
15. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?					
16. If there was an interruption or break in the original series of events, how was it caused, and by whom?					
(a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?					
(b) Did the buyer terminate the relationship with the broker? Why?					
(c) Was there interference in the series of events from any outside or intervening cause or party?					
(d) Was there abandonment or estrangement?					
17. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase?					
(a) Did the broker make preparations to show the property to the buyer?					
(b) Did the broker make continued efforts after showing the property?					
(c) Did the broker remove an impediment to the sale?					
(d) Did the broker make a proposal upon which the final transaction was based?					
(e) Did the broker motivate the buyer to purchase?					<i>(Adopted 11/03)</i>



**How do procuring cause disputes come about?**

Get your phone, tablet or pc ready!



# Kahoot.it



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**Diane K. Disbrow**  
**GRI, CRS, CRB, ABR, SRS, RSPS, SRES, e-Pro®, SFR, RENE, PSA**

(Ocean County, New Jersey)



Diane Disbrow has been an active REALTOR® in New Jersey for over 39 years and was involved in the management of her and her husband's independent real estate company for 33 years. Diane has been active on the Risk Management, Legal Affairs and Professional Standards Committees at the local, state and national level for many years and served as chair of NAR's Professional Standards Committee twice. Due to her extensive knowledge, she has launched a successful career as a real estate instructor and lecturer and has presented numerous educational programs for the National Association of REALTORS® and various local and state associations across the country.

# Code of Ethics and Standards of Practice

## of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2020

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®S.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

### 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)

## Duties to Clients and Customers

### Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

#### • Standard of Practice 1-1

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

#### • Standard of Practice 1-2

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

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

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

#### • Standard of Practice 1-3

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

#### • Standard of Practice 1-4

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

#### • Standard of Practice 1-5

REALTORS® may represent the seller/landlord and buyer/tenant in the

same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• **Standard of Practice 1-6**

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

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/20)*

• **Standard of Practice 1-8**

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

• **Standard of Practice 1-9**

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

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®'S advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS® are required by court order; or
  - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
  - d) it is necessary to defend a REALTOR® or the REALTOR®'S employees or associates against an accusation of wrongful conduct.

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

• **Standard of Practice 1-10**

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

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'S company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'S company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

• **Standard of Practice 1-14**

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

• **Standard of Practice 1-15**

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

• **Standard of Practice 1-16**

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

## Article 2

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

• **Standard of Practice 2-1**

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

• **Standard of Practice 2-2**

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

• **Standard of Practice 2-3**

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

• **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**

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

## Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS®, acting as exclusive agents or brokers of sellers/ landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**

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

- **Standard of Practice 3-4**

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

- **Standard of Practice 3-5**

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

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**

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

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

- **Standard of Practice 3-9**

REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker. *(Adopted 1/10)*

- **Standard of Practice 3-10**

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

- **Standard of Practice 3-11**

REALTORS® may not refuse to cooperate on the basis of a broker’s race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/20)*

## Article 4

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

- **Standard of Practice 4-1**

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

## Article 5

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

## Article 6

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

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

- **Standard of Practice 6-1**

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

## Article 7

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

## Article 8

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

## Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing 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 to such agreements upon their signing or initialing. *(Amended 1/04)*

### • Standard of Practice 9-1

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

### • Standard of Practice 9-2

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

## Duties to the Public

## Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/14)*

### • Standard of Practice 10-1

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

### • Standard of Practice 10-2

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

### • Standard of Practice 10-3

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)*

### • Standard of Practice 10-4

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

## Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

### • Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and
- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
  - 2) date prepared
  - 3) defined value or price
  - 4) limiting conditions, including statements of purpose(s) and intended user(s)
  - 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
  - 6) basis for the opinion, including applicable market data
  - 7) if the opinion is not an appraisal, a statement to that effect
  - 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
  - 9) disclosure of whether and when a physical inspection of the property's interior was conducted
  - 10) disclosure of whether the REALTOR® has any conflicts of interest
- (Amended 1/14)*

### • Standard of Practice 11-2

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

### • Standard of Practice 11-3

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on

the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. (Adopted 1/96)

• **Standard of Practice 11-4**

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

## Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 1/08)

• **Standard of Practice 12-1**

Unless they are receiving no compensation from any source for their time and services, REALTORS® may use the term “free” and similar terms in their advertising and in other representations only if they clearly and conspicuously disclose:

- 1) by whom they are being, or expect to be, paid;
- 2) the amount of the payment or anticipated payment;
- 3) any conditions associated with the payment, offered product or service, and;
- 4) any other terms relating to their compensation. (Amended 1/20)

• **Standard of Practice 12-2**

(Deleted 1/20)

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. (Amended 1/93)

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. (Adopted 11/86, Amended 1/16)

• **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. (Amended 1/93)

• **Standard of Practice 12-7**

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

• **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS® websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action. (Adopted 1/07)

• **Standard of Practice 12-9**

REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. (Adopted 1/07)

• **Standard of Practice 12-10**

REALTORS®' obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission; or
- 5) otherwise misleading consumers, including use of misleading images. (Adopted 1/07, Amended 1/18)

• **Standard of Practice 12-11**

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. (Adopted 1/07)

• **Standard of Practice 12-12**

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. (Adopted 1/08)

• **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. (Adopted 1/08)

## Article 13

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

## Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in

which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

• **Standard of Practice 14-1**

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

• **Standard of Practice 14-2**

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

• **Standard of Practice 14-3**

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

• **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

## Duties to REALTORS®

### Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

• **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

• **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07, Amended 1/12)*

• **Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)*

### Article 16

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

• **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees,

compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 16-2**

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

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

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

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

• **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

• **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

• **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

• **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service,

and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

• **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

• **Standard of Practice 16-8**

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

• **Standard of Practice 16-9**

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

• **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

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

• **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

• **Standard of Practice 16-13**

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

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

• **Standard of Practice 16-14**

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

• **Standard of Practice 16-15**

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

• **Standard of Practice 16-16**

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

• **Standard of Practice 16-17**

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

• **Standard of Practice 16-18**

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

• **Standard of Practice 16-19**

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

• **Standard of Practice 16-20**

REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

## Article 17

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

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

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

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

- **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

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

- **Standard of Practice 17-3**

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

- **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

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

lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*
- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

- **Standard of Practice 17-5**

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

## Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.